

United States
Circuit Court of Appeals
For the Ninth Circuit. 6

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Plaintiff in Error,

vs.

NORTHERN LIGHT MINING COMPANY, a Cor-
poration,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Alaska, Second Division.

Filed

DEC 6 - 1916

F. D. Monckton,

Filmer Bros. Clerk, 330 Jackson St., S. F., Cal.

United States
Circuit Court of Appeals
For the Ninth Circuit.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Amended Answer	7
Answer in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court.....	62
Answer to Amended Complaint in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court	55
Assignment of Errors	164
Attorneys of Record, Names and Addresses of..	1
Bill of Exceptions	18
Bond on Writ of Error.....	190
Certificate of Clerk U. S. District Court to Transcript of Record	193
Certificate of County Clerk to Judgment-roll, etc.	85
Citation on Writ of Error.....	197
Complaint	1
Complaint in Superior Court in Northern L. M. Co. v. Blue Goose M. Co.....	31
Demurrer to Amended Answer in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court	52
Exemplified Copy of Judgment and Order of District Court of Appeal.....	95

EXHIBITS:

Exhibit "A" to Complaint—Lease, May 10, 1907, Between Northern L. M. Co. and Blue Goose Mining Company.....	37
Plaintiff's Exhibit No. 1—Certificate of Secretary of Alaska Re Payment of License Tax for Year 1915 by Northern L. M. Co.	20
Plaintiff's Exhibit No. 2—Exemplified Copy of Sections 1, 4 and 5 of Article VI, Constitution of State of California, etc.....	22
Plaintiff's Exhibit No. 3—Exemplified Copy of Judgment-roll and Remittitur of Superior Court, State of California, Northern L. M. Co. v. Blue Goose M. Co.	31
Plaintiff's Exhibit No. 5—Notice of Appeal in Northern L. M. Co. v. Blue Goose M. Co.	88
Plaintiff's Exhibit No. 6—Exemplified Copy of Order of Supreme Court Transferring Cause to District Court of Appeals	91
Plaintiff's Exhibit No. 7—Exemplified Copy of Judgment and Order of District Court of Appeal.....	95
Plaintiff's Exhibit No. 8—Excerpts from Minutes of Meeting of Board of Directors of Blue Goose M. Co., September 27, 1911	108

Index

Page

EXHIBITS—Continued:

Plaintiff's Exhibit No. 9—Excerpts from Minutes of Meeting of Board of Direc- tors of Blue Goose M. Co., September 23, 1910	112
Defendant's Exhibit "A"—Articles of In- corporation of Blue Goose M. Co.....	114
Defendant's Exhibit "B" for Identifica- tion—By-laws of Blue Goose M. Co....	121
Defendant's Exhibit "C"—Minutes of Meeting of Stockholders of Blue Goose M. Co., August 1, 1910.....	138
Defendant's Exhibit "D"—Minutes of Meeting of Stockholders of Blue Goose M. Co., September 23, 1910.....	139
Defendant's Exhibit "E"—Minutes of Meeting of Board of Directors of Blue Goose M. Co., September 23, 1910.....	141
Defendant's Exhibit "F"—Minutes of Meeting of Stockholders of Blue Goose M. Co., March 7, 1911.....	143
Defendant's Exhibit "G"—Minutes of Meeting of Stockholders of Blue Goose M. Co., September 27, 1911.....	144
Findings of Fact and Conclusions of Law.....	73
Findings of Fact and Conclusions of Law, in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court	73
Instruction to Jury	14
Judgment	16

Index	Page
Judgment in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court.....	80
Judgment of District Court of Appeal of State of California in Northern L. M. Co. v. Blue Goose M. Co.....	83
Motion for Judgment on First Count on the Pleadings, in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court.....	54
Motion to Strike Out Portions of Amended An- swer in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court.....	53
Names and Addresses of Attorneys of Record	1
Order Allowing Writ of Error.....	189
Order Enlarging Time to December 2, 1916, to File Record and Docket Cause.....	198
Order Enlarging Time to December 28, 1916, to File Record and Docket Cause.....	200
Order Settling Bill of Exceptions.....	163
Petition for Writ of Error.....	188
Plaintiff's Amendment to Second Count of Com- plaint in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court.....	44
Plaintiff's Second Amendment to Second Count of Amended Complaint in Northern L. M. Co. v. Blue Goose M. Co. in Superior Court	46
Reply.....	13
TESTIMONY ON BEHALF OF PLAINTIFF:	
BACHELDER, J. A.....	101
Cross-examination.....	104

Index

Page

TESTIMONY ON BEHALF OF PLAINTIFF

—Continued:

ORTON, IRA D..... 99

Cross-examination..... 100

RUSSELL, G. H..... 99

Cross-examination 99

TESTIMONY ON BEHALF OF DEFENDANT:

COLE, J. J..... 109

Cross-examination..... 112

LINDEBERG, JAFET..... 150

Cross-examination..... 156

Redirect Examination..... 156

Recross-examination 158

LOMEN, G. J..... 129

Cross-examination 135

Redirect Examination 136

Recross-examination 136

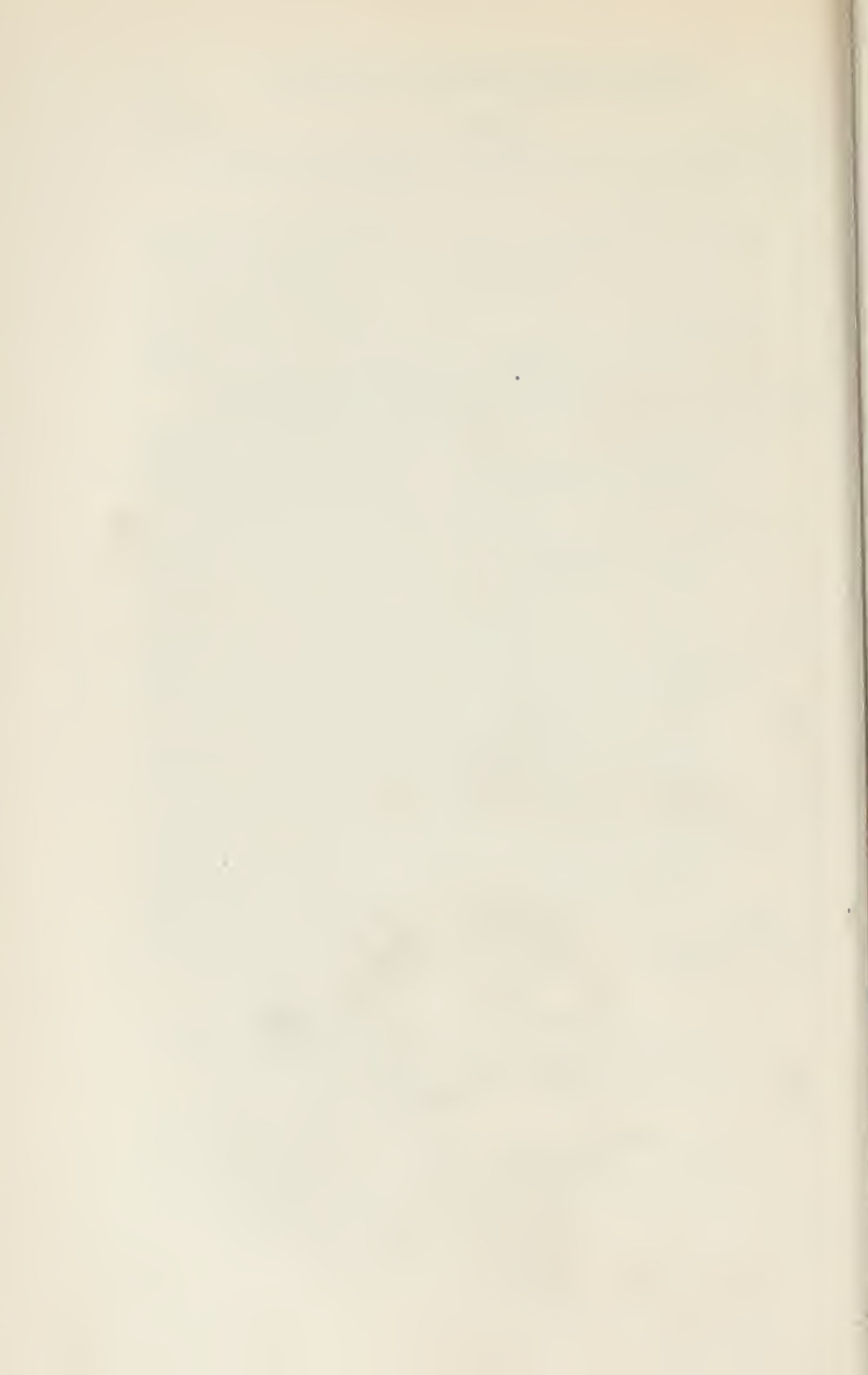
ORTON, IRA D. 159

STEVENSON, L. 137

Cross-examination 149

Verdict 15

Writ of Error 194



Names and Addresses of Attorneys of Record.

IRA D. ORTON, Nome, Alaska,

GEO. B. GRIGSBY, Nome, Alaska,

Attorneys for Plaintiff.

G. J. LOMEN, Nome, Alaska,

O. D. COCHRAN, Nome, Alaska,

Attorneys for Defendant. [2*]

*In the United States District Court in and for the
District of Alaska, Second Division.*

No. 2616.

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Complaint.

Northern Light Mining Company, a corporation, duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business in said State and a citizen and resident of said State, brings this action against Blue Goose Mining Company, a corporation organized and existing under and by virtue of the laws of the Territory of Alaska and being a citizen and resident of the Territory of Alaska, and for cause of action against said defendant this plaintiff alleges:

*Page-number appearing at foot of page of original certified Transcript of Record.

I.

That this plaintiff now is and at all the time herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business at the City and County of San Francisco, in said State, and a citizen and resident of said State of California. That the plaintiff has paid its license tax to the Territory of Alaska last due, and has duly paid all license taxes accruing against it in favor of the Territory of Alaska.

II.

That the defendant, Blue Goose Mining Company, now is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the Territory of Alaska, with its principal place of business and office at the City of Nome in said Territory, and a citizen and resident of said Territory of Alaska and a citizen and resident within the District of Alaska. [3]

III.

That at all the times hereinafter mentioned the Superior Court of the State of California in and for the City and County of San Francisco, in the State of California, was a court of general jurisdiction and a court of record duly created and organized by and pursuant to the laws of the said State of California.

IV.

That on or about the 2d day of June, 1911, the plaintiff herein, said Northern Light Mining Company, duly commenced an action in said Superior Court of the State of California, in and for the City

and County of San Francisco, against the defendant herein, Blue Goose Mining Company, said action in said Superior Court being entitled "Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant," and being numbered 36,081 on the files of said Superior Court. That said action was commenced in said Superior Court by the filing by said Northern Light Mining Company of a complaint therein against said Blue Goose Mining Company on said 2d day of June, 1911; that on said date summons was duly issued in said cause and was thereafter duly served on said defendant, Blue Goose Mining Company, personally, in said City and County of San Francisco, State of California, by serving upon said defendant personally in said city and county, a copy of said summons, together with a copy of said complaint; that thereafter, and prior to the entry of judgment in said action as hereinafter set out, said defendant, Blue Goose Mining Company, duly appeared in said action in said Superior Court and duly filed therein its verified answer to the said complaint filed by said Northern Light Mining Company; that thereafter such proceedings were had and taken in said action in said Superior Court that on the 22d day of March, 1912, judgment was given and made in said action by said Superior Court in favor of the plaintiff, Northern Light Mining Company, and against said Blue Goose Mining Company in the sum of Ten Thousand Nine Hundred Eighty-six and 68/100 (\$10,986.68) Dollars, together with interest thereon at the rate of seven (7) per cent per annum

from June 2d, 1911, [4] and costs amounting to \$55; that is to say, judgment was rendered in favor of the plaintiff and against the defendant in the total sum, including principal and interest, and costs, of Eleven Thousand Six Hundred Sixty-one & 20/100 (\$11,661.20) Dollars. That said judgment was on the 26th day of March, 1912, duly entered in the judgment record of said Superior Court. That said Superior Court was at all the times herein mentioned and now is the competent Jurisdiction to hear and determine said action of said Northern Light Mining Company, plaintiff, against Blue Goose Mining Company, defendant, and to render judgment therein, and that said Superior Court at and prior to the time of the rendering and entering of said judgment in said action in favor of this plaintiff and against said defendant as aforesaid, had full and complete jurisdiction of both said plaintiff and said defendant to said action, and was in all things and particulars duly authorized and empowered to render said judgment in said action in favor of said plaintiff and against said defendant, as aforesaid.

V.

That after the rendition and entry of said judgment as aforesaid, plaintiff moved the said Superior Court for a new trial in said action, and the said Superior Court thereafter made and entered its order denying said motion. That thereafter plaintiff appealed from said judgment and from said order denying its motion for a new trial to the Supreme Court of the State of California. That thereafter the said Supreme Court duly and regularly

transferred said appeal to the District Court of Appeal of the State of California, in and for the Third Appellate District. That thereafter such proceedings were had and taken in said action that the said District Court of Appeal rendered its decision affirming the said judgment and said order of said Superior Court. That thereafter and prior to the commencement of this action a remittitur was duly and regularly sent down from said District Court of Appeal to said Superior Court and filed therein, affirming said judgment and said order, and thereafter said judgment became final. [5]

VI.

That under the laws of the State of California as promulgated in Section 1920 of the Civil Code of the State of California, interest is payable on judgments recovered in the courts of said State at the rate of seven (7) per cent per annum.

VII.

That no part of said judgment has been paid and that the whole amount of the principal sum thereof, to wit: \$11,661.20, together with interest thereon at the rate of seven per cent (7%) per annum from said 22d day of March, 1912, is now wholly due, owing and unpaid from said Blue Goose Mining Company to this plaintiff.

WHEREFORE, plaintiff prays judgment against said defendant, Blue Goose Mining Company, for said principal sum of Eleven Thousand, six hundred and Sixty-one and 20/100 (\$11,661.20) Dollars, and for interest thereon from the 22d day of March, 1912,

at the rate of seven (7) per cent per annum, and for its costs of suit herein.

IRA D. ORTON.

GEORGE B. GRIGSBY.

United States of America,
Territory of Alaska,—ss.

G. H. Russel being first duly sworn, deposes and says: That he is the managing agent in the Territory of Alaska of the Northern Light Mining Company, a corporation, the plaintiff in the foregoing action; that he has read the above and foregoing complaint and knows the contents thereof, and that said complaint is true as affiant verily believes.

G. H. RUSSELL.

Subscribed and sworn to before me this 13th day of July, 1915.

[Notarial Seal]

J. V. SHELDON,

Notary Public, Territory of Alaska.

My commission expires Nov. 12, 1916.

[Endorsed]: #2616. In the United States District Court, in and for the District of Alaska, Second Division. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant. Complaint. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 14, 1915. G. A. Adams, Clerk. By ———, Deputy. Ira D. Orton and Geo. B. Grigsby, Attys. for Pltff. [6]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Amended Answer.

Comes now the defendant Blue Goose Mining Company, a corporation, and answering the complaint of the plaintiff filed herein, admits, denies and alleges:

I.

Answering paragraph one of plaintiff's complaint defendant alleges that it has no knowledge or information sufficient to form a belief as to whether or not the plaintiff has paid its license tax to the Territory of Alaska last due, or has paid all license taxes accruing against it in favor of the Territory of Alaska, and therefore denies the same and demands strict proof thereof.

II.

Answering paragraph three of said complaint defendant alleges that it has no knowledge or information sufficient to form a belief as to the allegations contained in said paragraph, and therefore denies the same and demands strict proof thereof.

III.

Answering paragraph four of said complaint, defendant denies knowledge or information sufficient to form a belief as to the allegations that on or about the 2d day of June, 1911, the plaintiff herein, said Northern Light Mining Company, duly commenced an action in the Superior Court of the State of California, in and for the City and County of San Francisco, against the defendant herein, Blue Goose Mining Company, said action in said Superior Court being entitled "Northern Light Mining Company, [7] a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant," and being numbered 36,081 on the files of said Superior Court; that said action was commenced in said Superior Court by the filing by said Northern Light Mining Company of a complaint therein against said Blue Goose Mining Company, on the 2d day of June, 1911, and that on said date a summons was duly issued in said cause, and defendant therefore denies said allegation and demands strict proof thereof.

Further answering said paragraph the defendant denies that on the 2d day of June, 1911, or thereafter, that the summons alleged in said paragraph of said complaint, was duly or at all served on this defendant Blue Goose Mining Company personally or at all, in the City and County of San Francisco, State of California, or elsewhere, by serving upon said defendant personally, or at all, in said city and county of San Francisco, or elsewhere, a copy of said summons, together with a copy of the complaint in said action, or at all. And defendant fur-

ther denies that thereafter and prior to the entry of any judgment in said alleged action, as set out in said complaint, or at all, the said defendant Blue Goose Mining Company duly, or at all, appeared in said alleged action in said Superior Court, or filed therein its verified answer to the complaint filed by said Northern Light Mining Company.

And further answering said paragraph of said complaint, the defendant denies that said Superior Court had, or prior to the time of the rendering and entering of the judgment alleged in said paragraph of said complaint in said action in favor of the plaintiff and against the defendant, had full, complete or any jurisdiction of this defendant, or that said Court was duly authorized or empowered to render any judgment in said action in favor of said plaintiff and against this defendant. The defendant denies knowledge or information sufficient to form a belief as to all other matters or things alleged in said paragraph of said complaint, and therefore denies the same and demands strict proof thereof. [8]

IV.

Answering paragraph five of said complaint, defendant denies that after the rendition and entry of the judgment alleged in said complaint, or at all, the defendant moved the said Superior Court for a new trial in said action, or that the defendant thereafter appealed from any judgment or order denying a motion for a new trial in said alleged action, or at all, to the Supreme Court of the State of California. And as to all other matters or things alleged in said paragraph of said complaint, the defendant denies

knowledge or information sufficient to form a belief and therefore denies the same and demands strict proof thereof.

V.

Answering paragraph six of said complaint, defendant denies that it has knowledge or information sufficient to form a belief as to the matters and things therein alleged, and therefore denies the same and demands strict proof thereof.

VI.

Answering paragraph seven of said complaint, the defendant admits that no part of said judgment as alleged in said complaint has been paid, but denies that the whole amount of the principal sum thereof, to wit: \$11,661.20, or any part thereof, together with interest thereon at the rate of seven per cent (7%) per annum from the 22d day of March, 1912, is due from this defendant to the plaintiff, or that said amount, or any part thereof, is due or owing from said Blue Goose Mining Company to the plaintiff.

VII.

Further answering said complaint, defendant alleges that at the time said action was commenced, as set forth and alleged in the plaintiff's complaint, and from that time up to, and at the time said supposed judgment was rendered, as alleged in plaintiff's complaint, the said defendant was a corporation duly organized under the laws of the Territory of Alaska, and was a citizen of the said Territory of Alaska and a resident therein, and not elsewhere, and was not served with process [9] and had no notice of the pendency of said alleged action in said

Superior Court for the City and County of San Francisco, State of California, and that it, said defendant, never appeared thereto or therein in person or by attorney, and did not, at the time of the alleged commencement of said action, or the pretended service of summons therein or the entry of said alleged judgment, live within the State of California, or have within said State of California any agent, officer, representative, or employee authorized to accept service of process or upon whom services of process could be made, or authorized to appear in said alleged action, or otherwise, nor did the defendant, during any of said time, have any property within the State of California, or had any business in said State, or within the jurisdiction of the said court alleged to have rendered said judgment.

WHEREFORE defendants demand that such action be dismissed, and for its costs and disbursements herein incurred.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendant.

United States of America,

Territory of Alaska,

Second Division,—ss.

J. J. Cole, being duly sworn, on oath deposes and says:

That he is *the* a director and V. President of the said defendant Blue Goose Mining Company; that he has read the foregoing amended answer, knows the contents thereof, and the same is true as he verily believes.

J. J. COLE.

Subscribed and sworn to before me this 17 day of July, 1916.

[Notarial Seal]

O. D. COCHRAN,

Notary Public for the Territory of Alaska, residing at Nome.

My commission expires June 27th, 1917.

Service of the within and foregoing amended answer hereby acknowledged this — day of July, 1916.

Attorney for Plaintiff. [10]

[Endorsed]: #2616. In the District Court for the District of Alaska, Second Division. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Cor., Defendant. Amended Answer. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Jul. 17, 1916. G. A. Adams, Clerk. By M., Deputy. G. J. Lomen, O. D. Cochran, Attorneys for Defendant. [11]

*In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Reply.

Comes now the plaintiff in the above-entitled action and replies to the answer of the defendant herein as follows:

I.

Replying to the affirmative matter set forth in paragraph VII of said answer, plaintiff admits that the defendant was at all times a corporation duly organized under the laws of the Territory of Alaska, and was a citizen of said Territory and a resident therein, but denies each and every other allegation of said paragraph VII.

WHEREFORE plaintiff demands judgment as prayed for in its complaint.

IRA D. ORTON,
GEORGE B. GRIGSBY,
Attorneys for Plaintiff. [12]

United States of America,
Territory of Alaska,—ss.

G. H. Russell being first duly sworn, deposes and says: That he is the managing agent of the plaintiff corporation, Northern Light Mining Company; that he has read the above and foregoing reply, knows the contents thereof and believes the same to be true.

G. H. RUSSELL.

Subscribed and sworn to before me this 25th day of October, 1915.

[Notarial Seal] LAWRENCE S. KERR,
Notary Public, Territory of Alaska.
My commission expires May 9, 1917.

United States of America,
District of Alaska,—ss.

Due service of the within reply is hereby accepted at Nome, Alaska, this 30th day of October, 1915, by receiving a copy thereof.

O. D. COCHRAN,
Of Attorney for Deft.

[Endorsed]: 2616. In the District Court for the District of Alaska, Second Division. Northern Light M. Co., Plaintiff, vs. Blue Goose Mining Co., Defendant. Reply. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 30, 1915. G. A. Adams, Clerk. By _____, Deputy. D. Geo. B. Grigsby, Ira D. Orton, Attorneys for Plaintiff. [13]

*In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Instruction to Jury.

The jury are instructed to find a verdict in favor of the plaintiff and against the defendant for the sum of \$11,661.20, with interest thereon from the 22d day

of March, 1912, at the rate of 7% per annum, amounting in the aggregate to the sum of \$15,189.

J. R. TUCKER,
District Judge.

Nome, Alaska, July 18, 1916.

[Endorsed]: #2616. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 18, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. [14]

*In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Verdict.

We, the jury in the above-entitled action, duly empaneled and sworn, find a verdict in favor of the plaintiff and against the defendant for the sum of \$15,189.

Dated at Nome, Alaska, July 18th, 1916.

W. E. BARTHOLOMEW,
Foreman.

[Endorsed]: #2616. In the District Court, Alaska, Second Division. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose

Mining Company, a Corporation, Defendant. Verdict. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 18, 1916. G. A. Adams, Clerk. By ————, Deputy. L. [15]

*In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Judgment.

The above-entitled action having been regularly tried before the above-entitled Court, sitting with a jury, at a special term of the above-entitled court, which was begun and holden in the City of Nome, Territory of Alaska, commencing on the 5th day of July, 1916; Messrs. Ira D. Orton and Geo. B. Grigsby, appearing as attorneys for the plaintiff, and Messrs. O. D. Cochran and G. J. Lomen, appearing as attorneys for the defendant; and the jury after having heard the evidence and the instructions of the Court, having on the 18th day of July, 1916, returned a verdict in said action, in words and figures as follows, to wit:

*“In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Verdict.

We, the jury in the above-entitled action, duly empaneled and sworn, find a verdict in favor of the plaintiff and against the defendant for the sum of \$15,189.

Dated at Nome, Alaska, July 18, 1916.

W. E. BARTHOLOMEW,

Foreman.”

And a motion for a new trial in said action, interposed by the defendant, having been denied;

NOW, THEREFORE, by virtue of the law and the premises it is by the Court Ordered and Adjudged, that the plaintiff, Northern Light Mining Company, a corporation, do have and recover of and from [16] the defendant, the Blue Goose Mining Company, a corporation, the sum of Fifteen Thousand One Hundred and Eighty-nine Dollars (\$15,189), together with interest thereon at the rate of 8% per annum from the 18th day of July, 1916, together with costs of suit taxed at \$42.15.

Done in open court at Nome, Alaska, this 5th day of August, 1916.

J. R. TUCKER,

Judge of the District Court, District of Alaska,
Second Division.

[Endorsed]: No. 2616. District Court, Alaska, Second Div. Northern Light Mining Company, Plaintiff, vs. Blue Goose Mining Company, Defendant. Judgment. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 5, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. Orders and Judgments, Vol. III, page 288c. Jd. Docket #3, page 18. Ira D. Orton, Atty. for Plaintiff. [17]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED, That the above-entitled action came on for trial in Nome, Alaska, on the 17th day of July, 1916, at a special term of the above-entitled court regularly called and held in the town

of Nome, Territory of Alaska, before the Honorable J. R. Tucker, Judge of the above-entitled court sitting with a jury. Ira D. Orton and George B. Grigsby appeared for the plaintiff and G. J. Lomen and O. D. Cochran appeared for the defendant.

Thereupon a jury having been duly and regularly empaneled and sworn to try the above-entitled action the following proceedings were had and testimony taken, to wit:

Mr. Lomen, on behalf of the defendant, asked leave of the Court to file an amended answer to the complaint of the plaintiff, to the filing of which Mr. Orton, on behalf of the plaintiff, objected to the filing of said amended answer on [18] the grounds that same was offered too late. The Court allowed the amended answer to be filed over the objection of the plaintiff. Whereupon it was agreed between counsel for plaintiff and defendant, that plaintiff's reply to the original answer of the defendant would stand as a reply to the amended answer.

Mr. Orton requested the instructions to the jury to be put in writing.

Mr. ORTON.—If the Court pleases, I first offer in evidence certificate signed by the Secretary of Alaska to the effect that the Northern Light Mining Company paid its license tax for the year 1915.

Mr. COCHRAN.—We object to the offer on the ground that the same is immaterial, and not showing that the plaintiff has paid its tax to the Territory for the year 1916.

The COURT.—The objection overruled and the paper will be received in evidence.

To which ruling of the Court the defendant excepted and an exception was allowed, said certificate being admitted in evidence by the Court and marked "Plaintiff's Exhibit No. 1," and being as follows:

Plaintiff's Exhibit No. 1—Certificate of Secretary of Alaska Re Payment of License Tax for Year 1915 by Northern L. M. Co.

"United States of America,
Territory of Alaska,—ss.

I, Charles E. Davidson, Secretary of the Territory of Alaska, do hereby certify that the Northern Light Mining Company, [19] a foreign corporation doing business in the Territory of Alaska, on December 28, 1914, paid its territorial license fee for the year nineteen hundred and fifteen (1915), in the sum of Fifteen (\$15) Dollars, as required by Section Six of Chapter 11 of the 1913 Session Laws of Alaska.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Territory of Alaska, at Juneau, this fourteenth day of August, A. D. 1915.

[Seal] (Signed) CHARLES E. DAVIDSON,
Secretary of Alaska.

(Canceled I. R. S. Ten Cents.)

[Endorsed on Back]: #2016. In the District Court, Territory of Alaska, Second Division. Northern Light Min. Co. vs. Blue Goose Min. Co. Plt's Ex. 1. Deft's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By ———, Deputy."

Mr. ORTON.—We now offer an exemplified copy of [20] sections 1, 4 and 5, of article 6 of the Con-

stitution of the State of California, and section 1920 of the Civil Code of said State under the great seal of the State of California, certified by the Secretary of State. The purpose is to show the jurisdiction of the various courts, Superior, Supreme and District Court of Appeals.

Mr. COCHRAN.—We object to the introduction of the certificate for the reason that the certificate recites that sections 1, 4 and 5 of article 6 of the Constitution of the State of California, are now in full force and effect, which is dated on the 15th day of September, 1915, long subsequent to the date alleged as the recovery of the judgment sued on. The judgment sued on is alleged to have been recovered on the 21st day of June, 1911. This is four years subsequent that the Secretary of State certifies these sections of the Constitution to have been in force. There is no presumption arising that these laws were in force four years prior to the date of such certificate, and we object to the admission of the same as being incompetent, irrelevant and immaterial.

The COURT.—The objection overruled, and the certificate will be received in evidence.

To which ruling of the Court the defendant excepted and an exception was allowed.

Certificate admitted and read in evidence and marked Plaintiff's Exhibit 2, as follows:

**Plaintiff's Exhibit 2—Exemplified Copy of Sections
1, 4 and 5 of Article VI, Constitution of State of
California, etc.**

**“STATE OF CALIFORNIA, DEPARTMENT OF
STATE.**

I, Frank C. Jordan, Secretary of State of the State
[21] of California, do hereby certify that I have
carefully compared the annexed copies of sections
1, 4 and 5 of article VI of the Constitution of the State
of California, and section 1920 of the Civil Code
of said State, now in full force and effect, with the
originals on file in my office, and that the same are
correct transcripts therefrom, and of the whole
thereof.

IN WITNESS WHEREOF, I have hereunto set
my hand and have caused the Great Seal of the State
of California to be affixed hereto this 15th day of
September, A. D. 1915.

FRANK C. JORDAN,
Secretary of State.

[Great Seal of the State of California.] By _____,
Deputy.
(Canceled I. R. S. Ten Cents.)

ARTICLE VI.

Section 1. The judicial power of the State shall
be vested in the Senate, sitting as a court of impeach-
ment, in a Supreme Court, District Courts of Appeal,
Superior Courts and such inferior courts as the
Legislature may establish in any incorporated city
or town, township, county, or city and county.

Sec. 4. The Supreme Court shall have appellate jurisdiction on appeal from the Superior Courts in [22] all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to Two Thousand Dollars; also, in all such probate matters as may be provided by law; also on questions of law alone, in all criminal cases where judgment of death has been rendered; the said court shall also have appellate jurisdiction in all cases, matters and proceedings pending before a District Court of Appeals, which shall be ordered by the Supreme Court to be transferred to itself for hearing and decision, as hereinafter provided. The said court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any District Court of Appeal, or before any judge thereof.

The State is hereby divided into three appellate districts, in each of which there shall be a District Court of Appeal consisting of three justices. The first district shall embrace the [23] following counties: San Francisco, Marin, Contra Costa, Alameda,

San Mateo, Santa Clara, Fresno, Santa Cruz, Monterey, and San Benito.

The second district shall embrace the following counties: Tulare, Kings, San Luis Obispo, Kern, Inyo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego.

The third district shall embrace the following counties: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano, Sacramento, El Dorado, San Joaquin, Amador, Calaveras, Stanislaus, Mariposa, Madera, Merced, Tuolumne, Alpine, and Mono.

The Supreme Court, by orders entered in its minutes, may from time to time remove one or more counties from one appellate district to another, but no county not contiguous to another county of a district shall be added to such district.

Said District Courts of Appeal shall hold their regular sessions respectively at San Francisco, Los Angeles, and Sacramento, and they shall always be open for the transaction of business.

The District Courts of Appeal shall have appellate jurisdiction on appeal from the Superior Courts in all cases at law in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars, [24] and does not amount to two thousand dollars; also, in all cases of forcible and unlawful entry and detainer (except such as arise in Justices' Courts), in proceedings in insolvency, and in actions to prevent or abate a nui-

sance; in proceedings of mandamus, certiorari, and prohibition, usurpation of office, contesting elections and eminent domain, and in such other special proceedings as may be provided by law (except cases in which appellate jurisdiction is given to the Supreme Court); also, on questions of law alone, in all criminal cases prosecuted by indictment or information in a court of record, excepting criminal cases where judgment of death has been rendered. The said courts shall also have appellate jurisdiction in all cases, matters, and proceedings pending before the Supreme Court which shall be ordered by the Supreme Court to be transferred to a District Court of Appeal for hearing and decision. The said courts shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of their appellate jurisdiction. Each of the justices thereof shall have power to issue writs of habeas corpus to any part of his appellate district upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the District Court of Appeal of his district, or before any Superior [25] Court within his district, or before any Judge thereof.

The Supreme Court have power to order any cause pending before the Supreme Court to be heard and determined by a District Court of Appeal, and to order any cause pending before a District Court of Appeal to be heard and determined by the Supreme Court. The order last mentioned may be made before judgment has been pronounced by a District

Court of Appeal, or within thirty days after such judgment shall have become final therein. The judgments of the District Courts of Appeal shall become final therein upon the expiration of thirty days after the same shall have been pronounced.

The Supreme Court shall have power to order causes pending before a District Court of Appeal for one district to be transferred to the District Court of Appeal of another district for hearing and decision.

The Justices of the District Courts of Appeal shall be elected by the qualified electors within their respective districts at the general state elections at the times and places at which Justices of the Supreme Court are elected. Their terms of office and salaries shall be the same as those of Justices of the Supreme Court, and their salaries shall be paid by the State. Upon the ratification by the people of this amendment the [26] Governor shall appoint nine persons to serve as Justices of the District Courts of Appeal until the first Monday after the first day of January in the year 1907; provided, that not more than six of said persons shall be members of the same political party. At the election in the year 1906 nine of such justices shall be elected as above provided, and the justices of each District Court of Appeal shall so classify themselves by lot that one of them shall go out of office *at* at the end of four years, one of them at the end of eight years, and one of them at the end of twelve years; an entry of such classification shall be made in the minutes of the court, signed by the three justices thereof, and a duplicate thereof filed in the office of the Secretary of State. If any vacancy oc-

cur in the office of a Justice of the District Courts of Appeal, the Governor shall appoint a person to hold office until the election and qualification of a justice to fill the vacancy; such election shall take place at the next succeeding general State election as aforesaid; the justice then elected shall hold the office for the unexpired term.

One of the justices of each of the District Courts of Appeal shall be the presiding justice thereof, and as such shall be appointed or elected as the case may be. The presence of three justices shall be necessary for the transaction of any business by such court, except such as may be done at chambers, and the concurrence of three justices shall be [27] necessary to pronounce a judgment.

Whenever any justice of the Supreme Court is for any reason disqualified or unable to act in a cause pending before it, the remaining justices may select one of the Justices of the District Court of Appeal to act pro tempore in the place of the justice so disqualified or unable to act.

Whenever any Justice of a District Court of Appeal is for any reason disqualified or unable to act in any cause pending before it, the Supreme Court may appoint a Justice of the District Court of Appeal of another district, or a Judge of a Superior Court who has not acted in the cause in the court below, to act pro tempore in the place of the justice so disqualified or unable to act.

No appeal taken to the Supreme Court or to a District Court of Appeal shall be dismissed for the reason only that the same was not taken to the proper

court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein as if regularly appealed thereto.

All statutes now in force allowing, providing for, or regulating appeals to the Supreme Court shall apply to appeals to the District Courts of Appeal so far as such statutes are not inconsistent with this article and until the Legislature shall otherwise provide.

The Supreme Court shall make and adopt [28] rules not inconsistent with law for the government of the Supreme Court and of the District Courts of Appeal and of the officers thereof, and for regulating the practice in said courts.

Sec. 5. The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of divorce and for annulment of marriage; and of all such special cases and proceedings as are not otherwise provided for, and said court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in

inferior courts in their respective counties as may be prescribed by law. They shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State provided, that all actions for the recovery of possession of, quieting the title to, or for the enforcement of liens upon real estate [29] shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions, is situated. Said courts, and their judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

Sec. 1920. Interest is payable on judgments recovered in the Courts of this State, at the rate of seven per cent per annum, and no greater rate, but such interest must not be compounded in any manner or form.

[Great Seal of the State of California.]

[Endorsed on Back]: #2616. In the District Court, Territory of Alaska, Second Division. Northern Light M. Co., Plaintiff, vs. Blue Goose M. Co. Plt's. Ex. 2. Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By —————, Deputy. [30]

Mr. ORTON.—We next offer in evidence the exemplified copy of the Judgment-roll and Remittitur of the Superior Court for the State of California, City and County of San Francisco as sued on in this action.

Mr. LOMEN.—If the Court pleases, the defendant objects to the introduction of this Judgment-roll for the reason that the records so offered is incompetent, irrelevant and immaterial, and no proper foundation has been *lain* for the admission of the same.

Mr COCHRAN.—We further interpose an objection of the admissibility of this Judgment-roll in evidence because it is insufficient within itself to show *prima facie* jurisdiction over the defendant by the court of California purporting to have rendered such judgment, and if your Honor should hold the Judgment-roll sufficient to be entitled to be received in evidence, then we want to make an offer to prove the want of jurisdiction preliminary to the receiving of the document in evidence.

The COURT.—I think the Court will allow it to be admitted.

To which ruling of the Court the defendant excepted and an exception was allowed.

Mr. COCHRAN.—We now move the Court at this time to be permitted to offer evidence preliminary to the acceptance of the Judgment-roll in evidence showing want of jurisdiction in the court of California over the defendant.

The COURT.—I overrule the motion. [31]

To which ruling of the Court the defendant duly excepted and an exception was allowed:

Said Judgment-roll was thereupon received and read in evidence and marked "Plaintiff's Exhibit No. 3" and is as follows:

**Plaintiff's Exhibit No. 3—Exemplified Copy of
Judgment-roll and Remittitur of Superior
Court, State of California, Northern L. M. Co. v.
Blue Goose M. Co.**

*“In the Superior Court of the State of California
in and for the City and County of San Francisco.*

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

COMPLAINT.

Now comes the plaintiff above-named and com-
plains of the above-named defendant, and for cause
of action alleges:

I.

That the plaintiff is and at all times herein men-
tioned was a corporation organized and existing
under and by virtue of the laws of the State of Cali-
fornia:

II.

That the defendant is and at all times herein men-
tioned was a corporation organized and existing un-
der and by virtue of the laws of the District of
Alaska and is [32] now, and at all times herein
mentioned was doing business in the State of Cali-
fornia:

III.

That on or about the 10th day of May, 1907, in the City and County of San Francisco, State of California, the plaintiff and defendant entered into and executed a written agreement or lease, copy of which is attached hereto, marked exhibit "A" and made an integral part of this complaint.

IV.

That in and by said written agreement or lease the plaintiff granted, leased, demised and let unto the defendant for a period of three years commencing on the 10th day of May, 1907, and expiring on the 10th day of May, 1910, certain placer mining claims situated in the Council City Recording District in the District of Alaska, and known as:

Placer Mining Claim No. 1 below Discovery on Ophir Creek;

Placer Mining Claim No. 2 below Discovery on Ophir Creek:

Placer Mining Claim No. 3 below Discovery
W. H. P. on Ophir Creek;

Placer Mining Claim No. 3½ below Discovery on Ophir Creek;

(Sometimes called "The Oceanview.")

The "Richmond Bench" situated easterly of Claim No. 1 below Discovery;

The "Eureka Mine" situate easterly of Claim No. 2 below Discovery;

"Northern Light Bench" situate easterly of claim No. 3 below Discovery;

All of said claims being on or adjacent to Ophir Creek in the district aforesaid;

Together with the appurtenances and the rights and privileges to prospect and mine the same for gold and other [33] precious minerals and to extract and reduce the same to any commercial value.

V.

That in consideration of said lease the lessee, the defendant herein, covenanted and agreed with the plaintiff to enter upon said mining claims and premises afore described and to work the same mine-fashion with its steam dredger known as the "Alpha" in a manner necessary to good and economical mining, so as to take out the greatest amount of gold and precious metals possible, with due regard to the safety, development and preservation of said premises as workable mines,

Further, the defendant agreed to work all the gold-bearing gravel on said claims from rim to rim wherever it was practical to float said dredger and to do said work as steadily and continuously from the date of this lease as the weather and season of each year would permit during the aforesaid term; and said defendant further agreed to pay and deliver to said lessor as royalty and rent thirty-three and one-third ($33\frac{1}{3}$) per cent of all gold and precious minerals extracted from said premises during any single year until the gross yield during any single year should have amounted to fifty thousand dollars (\$50,000), and thereafter during said year to pay and deliver to said lessor as rent and royalty forty (40) per cent of all gold and precious minerals extracted from said premises in excess of said fifty thousand dollars (\$50,000) and until the gross yield during any

single year should have amounted to Two Hundred Thousand Dollars (\$200,000); [34]

And defendant further agreed to pay to the plaintiff as rent and royalty for said premises fifty (50) per cent of all gold and precious minerals extracted in any single year in excess of Two Hundred Thousand Dollars (\$200,000);

These royalties to be so paid were to be of like assay as those retained by the lessee and payment was to be made at such time and place as the lessor, the plaintiff herein should direct.

VI.

That thereafter, upon the execution and delivery of said agreement of lease, the defendant entered upon the afore-described premises and commenced mining thereon as aforesaid;

That during the year 1909 the defendant extracted gold from said premises valued in the sum of Sixty-two Thousand Eighty-four and $64/100$ Dollars (\$62,084.64);

That the said sum of Sixty-two Thousand Eighty-four and $64/100$ Dollars (\$62,084.64) the plaintiff was entitled under its said contract to the sum of Twenty-one Thousand Five Hundred and $51/100$ Dollars (\$21,500.51);

That the defendant has paid to the plaintiff the sum of Eighteen Thousand Eight Hundred Eighty-eight and $83/100$ Dollars (\$18,888.83) and no more; and that there is now due, owing and unpaid to the plaintiff from the defendant the sum of Two Thousand Six Hundred Eleven and $68/100$ Dollars (2611.68).

And for a further, second and separate cause of action against defendant, this plaintiff alleges: [35]

I.

The plaintiff hereby refers to paragraphs I, II, III, IV and V of its first cause of action in this complaint and makes the allegations set forth in said paragraphs an integral part of this count.

That thereafter upon the execution and delivery of said agreement or lease the defendant entered in and upon the afore-described premises and commenced mining thereon and continued mining on said premises until on or about the first day of September, 1909; that during said time that the defendant mined on said premises it did not work all the gold-bearing gravel on said claims from rim to rim wherever it was practical to float its dredger known as the "Alpha";

That on or about the first day of September, 1909, the defendant without the consent of the plaintiff moved its said dredger, the "Alpha," from said premises and discontinued dredging and mining thereon and that from said time the defendant has refused to enter upon said property and mine same and the defendant has not in any way or in any manner since on or about the first day of September, 1909, done any mining on said property;

That the conditions of the weather and season of the year 1909 made it possible for the defendant to have dredged and mined on the afore-described property up to and until the 20th day of October, 1909;

That through the defendant's failure to work the afore-described claims from rim to rim and through

its failure and refusal to carry out the terms of said contract and to [36] continue mining on said property plaintiff has been damaged in the sum of Twenty Thousand Dollars (\$20,000).

WHEREFORE plaintiff prays judgment against the defendant for the sum of Twenty-two Thousand Six Hundred Eleven and 68/100 Dollars (\$22,611.68), together with interest on the sum of Two Thousand Six Hundred Eleven and 68/100 Dollars (\$2,611.68) from October 1st, 1909, and for costs of suit.

W. S. ANDREWS,
Attorney for Plaintiff.

State of California,
City and County of
San Francisco,—ss.

D. M. Kent, being first duly sworn, deposes and says: That he is the secretary of the Northern Light Mining Company, a corporation, plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief and as to those matters he believes it to be true.

D. M. KENT.

Subscribed and sworn to before me this 27th day of May, 1911.

[Notarial Seal]

W. H. PYBURN,
Notary Public in and for the City and County of San Francisco, State of California. [37]

EXHIBIT "A."

THIS INDENTURE OR LEASE, made this tenth day of May, A. D. 1907, by and between the NORTHERN LIGHT MINING COMPANY, a corporation of San Francisco, California, the lessor and the BLUE GOOSE MINING COMPANY, a corporation of Nome, Alaska, lessee,

WITNESSETH:

That the lessor for and in consideration of the rents, royalties and agreements hereinafter reserved and by the lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said lessee those certain placer mining claims situate in the Council City Recording District, in the District of Alaska known as

Placer Mining Claim #1 below Discovery on Ophir Creek;

Placer Mining Claim #2 below Discovery on Ophir Creek;

Placer Mining Claim #3 below Discovery on Ophir Creek;

Placer Mining Claim #3½ below Discovery on Ophir Creek;

(Sometimes called "The Oceanview.")

The "Richmond Bench," situate easterly of #1 below discovery.

The "Eureka Mine," situate easterly of #2 below discovery.

"Northern Light Bench," situate easterly of #3 below discovery.

All of said claims being on or adjacent to Ophir Creek in the District aforesaid;

Together with the appurtenances and the rights and privileges to prospect and mine the same for gold and other precious minerals and to extract and reduce the same to any commercial value.

TO HAVE AND TO HOLD the afore-described premises unto said lessee for the full term of three years from date hereof, expiring at noon on the tenth day of May, A. D. 1910, unless [38] sooner forfeited through the violation of any covenant hereinafter against the said lessee reserved. And in consideration of said lease the said lessee covenants and agrees with the said lessor as follows, to wit:

To enter upon said mining claims and premises and to work the same mine-fashion with their steam dredger "Alpha," now on said ground, in a manner necessary to good and economical mining, so as to take out the greatest amount of gold and precious minerals possible, with due regard to the safety, development and preservation of said premises as working mines.

To work all the gold-bearing gravel on said claims from rim to rim, wherever it is practical to float said dredger, and,

To do said work as steadily and continuously from date of this lease as the weather and season of the year will permit, and generally, to so conduct their dredging operations as to conform to the laws of the United States and the District of Alaska and the local rules and regulations of miners in said mining district, and to do no act which may in any manner

involve the said lessor or its ownership in said mining property in any liability whatsoever;

To not allow or permit any person or persons, except the said lessee or its agents and workmen to take or hold possession of said premises or any part thereof under any pretense whatsoever;

To not assign this lease or any interest thereunder and to not sublet said premises or any part thereof without [39] the written consent of the said lessor;

To pay and deliver to said lessor as royalty and rent thirty-three and one-third ($33\frac{1}{3}$) per cent of all gold and precious minerals extracted from said premises during any single year until the gross yield during said years shall have amounted to Fifty Thousand (50,000) Dollars, and thereafter during said year to pay and deliver to said lessor as rent and royalty forty (40) per cent of all gold and precious minerals extracted from said premises in excess of said Fifty Thousand (50,000) Dollars, and until the gross yield during said year shall have amounted to Two Hundred Thousand (200,000) Dollars. On all gold and precious minerals extracted during any single year in excess of Two Hundred Thousand (200,000) Dollars the rent and royalty to be paid lessor is fifty (50) per cent. The royalties to be so paid are to be of like assay as those retained by lessee and payment to be made at such time and place as lessor shall direct, allowing said lessor or its agent reasonable notice so that he may be present at each and every clean-up, with the right and privilege of inspecting, examining and handling the same, as well as according to him the right and privilege of in-

specting and examining all work done on said property;

To deliver up to said lessor the premises with the appurtenances in good order and condition (accidents not arising from negligence alone excusing), without demand or further notice on said tenth day of May, A. D. 1910, at noon, or at any time previous upon demand for forfeiture.

Finally upon the violation or failure to perform [40] by said lessee, or any person acting under it, of any covenant hereinbefore reserved, the terms of this lease and all rights and privileges thereunder shall at the option of the lessor expire and said lease and said premises with the appurtenances shall at once become forfeited to said lessor, and the said lessor, or their agent, may thereupon, without demand or notice, enter upon said premises and dispossess all persons occupying the same with or without force and with or without process of law.

IT IS FURTHER MUTUALLY COVENANTED AND AGREED that all leases heretofore existing between the parties hereto, upon any and all of the above-described premises, shall be deemed as canceled and annulled and both parties hereto acknowledged a mutual settlement and accounting to date under said leases and of all matters and things arising therefrom.

It being distinctly understood that a certain settlement of account had at Nome, Alaska, during 1906, affecting the working of said claims by the lessee herein, was, in so far as the settlement for the season of 1906 is concerned, a final settlement and also is

it hereby particularly covenanted and agreed that the lessee waives all damages against lessor for any *user* whatsoever heretofore by the lessor had of a certain steam shovel owned by lessee.

Each and every clause and covenant of this indenture extends to the successors or all parties hereto and to the assigns of said lessor and as said lessor may elect to the assigns of said lessee.

IN WITNESS WHEREOF, the said parties, lessor and [41] lessee, have hereunto set their corporate name and affixed their seals by *by* their officers and agents thereunto, by resolution duly authorized.

NORTHERN LIGHT MINING
COMPANY, [Seal]

Lessor.

PHILIP T. BENNETT, [Seal]
President.

D. M. KENT [Seal]

[Seal of the Northern Secretary.
Light Mining Company.]

BLUE GOOSE MINING COM-
PANY, [Seal]

Lessee.

By GORDON HALL, [Seal]
Attorney in Fact.

Witnesses:

G. H. KELLOGG.

FRANK L. OWEN.

State of California,
City and County of San Francisco,—ss.

On this 16th day of May, in the year one thousand nine hundred and seven (1907), before me, Ben. F. Rector, a notary public, in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Philip T. Bennett and D. M. Kent, known to me to be the president and secretary, respectively, of the corporation that executed the within instrument and duly acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and [42] County of San Francisco, the day and year in this certificate first above written.

[Notarial Seal] BEN F. RECTOR,
Notary Public in and for the City and County of
San Francisco, State of California.

State of California,
City and County of San Francisco,—ss.

On this 18th day of May, in the year of our Lord one thousand nine hundred and seven, before me, Frank L. Owen, a notary public, in and for said city and county and State, residing therein, duly commissioned and sworn, personally appeared Gordon Hall, known to me to be the person whose name is subscribed to the within instrument, as the Attorney in Fact of Blue Goose Mining Company, and acknowledged to me that he subscribed the name of Blue Goose Mining Company thereto as principal, and his own name as attorney in fact.

In Witness Whereof I have hereunto set my hand and affixed my official seal, at my office in the city and county and State aforesaid the day and year in this certificate first above written.

[Notarial Seal]

FRANK L. OWEN,

Notary Public in and for the City and County of
San Francisco, State of California. [43]

Assigned to Department No. 8. Jun. 3, 1911.

E. P. MOGAN,

Presiding Judge.

[Endorsed on Back]: In the Superior Court of the State of California, in and for the City and County of San Francisco. 36,081. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant. Complaint. Damages. Indexed. Filed June 2, 1911. H. I. Mulcrevy, Clerk. By L. J. Welch, Deputy Clerk.

*In the Superior Court of the State of California in
and for the City and County of San Francisco.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant. [44]

**Plaintiff's Amendment to Second Count of
Complaint.**

Now comes the above-named plaintiff and files this its amendment to plaintiff's complaint on file herein and in place and stead of the second count in said complaint substitutes the following count:

"I.

Plaintiff hereby refers to paragraphs I, II, III, IV, and V of its first cause of action in the complaint on file and makes the allegations set forth in said paragraphs an integral part of this count;

II.

That thereafter, upon the execution and delivery of said lease——, the defendant entered upon the afore-described premises and commenced mining thereon and continued mining on said premises until on or about the 12th day of August, 1909; that at that time the defendant, without the consent of the plaintiff, commenced to remove its dredger, known as the "Alpha," from said premises and discontinued dredging and mining thereon with the exception of five days between the 12th of August, 1909, and the first day of September, 1909;

That on the first day of September, 1909, the plaintiff moved its dredger off the afore-described premises without the consent of the plaintiff and that from said time the defendant has refused to enter upon said property and mine the same, and that the de-

W. H. P.
N. P.

defendant has not in any way or in any
W.*H.P. manner, since on or about the 12th day
N.P. of August, 1909, except as aforesaid, done
any mining on said property. [45]

That through the defendant's refusal to carry out
the terms of said contract and to continue mining on
said property the plaintiff has been damaged in the
sum of Twenty Thousand Dollars (\$20,000.).

WHEREFORE, plaintiff prays judgment against
the defendant for the sum of Twenty-two Thousand
Six Hundred Eleven Dollars and Sixty-eight
W. H. P. Cents (\$22,611.68), together with interest
N. P. thereon from August 12th, 1909, and for costs
of suit.

W. S. ANDREWS,
Attorney for Plaintiff.

State of California,
City and County of San Francisco,—ss.

D. M. Kent, being first duly sworn, deposes and
says: That he is the secretary of the Northern Light
Mining Company, a corporation, plaintiff in the
above-entitled action; that he has read the foregoing
complaint and knows the contents thereof and that
the same is true of his own knowledge except as to
the matters which are therein stated on his informa-
tion or belief and as to those matters that he believes
it to be true.

D. M. KENT,

Subscribed and sworn to before me, this 27th day
of January, 1912.

[Notarial Seal] W. H. PYBURN,
Notary Public in and for the City and County of
San Francisco, State of California. [46]

IT IS HEREBY STIPULATED by and between the parties hereto that the foregoing Amended Complaint may be filed as though leave of Court had first been obtained.

FINK & WHITE.

W. S. ANDREWS.

Due service and receipt of a copy of the within amended complaint is hereby admitted this 26th day of January, 1912.

FINK & WHITE,

Attorneys for Defendant.

No. 36,081. Dept. No. 8.

[Endorsed]: Filed Jan. 29, 1912. H. I. Mulcrevy, Clerk. By Wm. J. Egan, Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

NORTHERN LIGHT MINING COMPANY, a Corporation.

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

**Plaintiff's Second Amendment to Second Count of
Amended Complaint.**

Now comes the above-named plaintiff, and with leave [47] of Court first *hand* and obtained, files this its Second Amendment to plaintiff's Amended Complaint on file herein, and in place of the second count in said complaint, substitutes the following count:

I.

Plaintiff hereby refers to Paragraphs I, II, III, IV and V of its first cause of action in the complaint on file herein, and makes the allegations set forth in said paragraph an integral part of this count.

II.

That thereafter, upon the execution and delivery of said lease, the defendant entered upon the afore-described premises and commenced mining thereon under and pursuant to the terms of the aforesaid lease, and continued mining on said premises under said lease until on or about the 12th day of August, 1909; that at that time, the defendant without the consent of plaintiff, commenced to remove its dredger, known as the "Alpha," from off said premises, and discontinued dredging and mining thereon, with the exception of a period of five days between the 12th day of August, 1909, and the first day of September, 1909; that on the 1st day of September, 1909, the plaintiff moved its dredger off the afore-described premises without the consent of the plaintiff, and that from said time the defendant has refused to enter upon said property and mine the same, and that the defendant has not in any way, or in any manner since on or about the 12th day of August, 1909, except as aforesaid, done any mining on said property. [48]

III.

That at the time defendant commenced to move its dredger off said premises on the 12th day of August, 1909, and also on the 1st day of September, 1909, there still remained 434,886 cubic yards of gold-bear-

ing gravel and ground which had not yet been worked, and was still virgin ground, and which was included in the premises leased by the plaintiff to the defendant as aforesaid;

That water was available to float the dredger to work this ground; that the formation of the bedrock of said remaining ground was such that the dredger could work it, and that, in short, it was practical to float the dredger on this remaining ground and to work it from rim to rim.

IV.

That between the 12th day of August, 1909, and the last day of the working season of the year 1909, the defendant would, if it had fully performed its agreement set out, have mined and dredged an amount of gold of the value of \$52,260.

That at the time the defendant moved its dredger off the premises on September 1st, 1909, the defendant had taken out during that season \$62,084.64;

That under the terms of the lease the defendant agreed to pay the plaintiff forty (40%) per cent of the gross amount of gold taken out of the ground, when that amount exceeded during any one year \$50,000, and did not exceed \$200,000; that the plaintiff would have received the sum of \$20,904 from the defendant if the defendant had fully executed and performed its agreement, and had mined the aforesaid premises for the full season of 1909. [49]

V.

That during the term of the aforesaid lease, and up to August 12th, 1909, the defendant did not work, and dredge the premises leased, from rim to rim, but .

picked out the rich paying gravel and worked the same, avoiding the lower grade ground.

That on August 12th, 1909, when the defendant had dredged the high-grade ground, it thereupon without the consent of plaintiff, abandoned the premises.

VI.

That since the defendant abandoned the afore-described premises on August 12th, 1909, the plaintiff has endeavored continuously ever since that date, to the best of its ability to secure some one else to work said property, but has not been able to do so;

That the greatest royalty that the plaintiff could have obtained from any one, either on the 12th day of August, 1909, or on the 1st day of September, 1909, or at any time since August 12th, 1909, to the present time, was and is 10% of the gross amount of gold extracted from the premises, and this percentage was at said dates, and is now the market rental value of said premises, expressed in terms of royalty paid on the gross amount of gold taken out; that the greatest royalty that the plaintiff can possibly obtain in the future from any one for working said premises is 10% of the gross amount of gold extracted. In other words, the greatest royalty which the plaintiff could have obtained on August 12th, 1909, or on the 1st day of September, 1909, or at any [50] time since then, and indeed the greatest royalty which the plaintiff can obtain in the future from any one for working with a dredge the same ground, and the same area of ground which the defendant

would have worked if it had fully performed its agreement, and had worked the entire season of 1909, is \$5226.

That since September 1st, 1909, no gold at all has been taken out of said property leased to defendant, as aforesaid.

VII.

That the aforesaid remaining virgin ground cannot be worked by any method than by a dredger, at a profit to plaintiff greater than 10% of the gross amount of gold that can be extracted. That the plaintiff does not own a dredger and it would be impossible for it to install a suitable and adequate dredger on the afore-described premises and work the same at any profit.

VIII.

That through the act of the defendant in vacating and abandoning the premises above described and breaking its lease, the plaintiff has been damaged as follows:

To the amount of \$15,678, which is the difference between \$5226, the best royalty obtainable by the plaintiff, as aforesaid, from any one else to work said property, and \$20,904, the royalty which plaintiff would have received if defendant had fully performed its agreement;

Interest on the sum of \$52,260 at the rate of 7% per annum, from September 1st, 1909. [51]

WHEREFORE, plaintiff prays judgment against defendant for the sum of Fifteen Thousand Six Hundred and Seventy-eight (\$15,678) Dollars, together with interest on the sum of Fifty-two Thousand Two

Hundred and Sixty (\$53,260) Dollars, at the rate of Seven (7%) per annum, from September 1st, 1909, and also for Twenty-Six Hundred and Eleven and 68/100 (\$2611.68) Dollars, with interest thereon at the rate of seven (7%) per annum from August 12th, 1909, and costs of suit, and for such other and further relief as may be meet in the premises.

W. S. ANDREWS,

A. H. BRANDT,

Attorneys for Plaintiff.

State of California,

City and County of San Francisco,—ss.

P. T. Bennett, being duly sworn, deposes and says: He is an officer of the Northern Light Mining Company, to wit, the president; that he has read the foregoing Amended Complaint and knows the contents thereof, and the same is true of his own knowledge, except as to those matters therein stated on information or belief, and as to those matters he believes it to be true.

P. T. BENNETT.

Subscribed and sworn to before me this 31st day of January, 1912. [52]

[Seal of the Superior Court]

JOHN F. MOONEY,

Deputy County Clerk and Ex-officio Deputy Clerk
of the Superior Court in and for the City and
County of San Francisco, State of California.

No. 36,081. Dept. No. 8.

[Endorsed]: Filed in Open Court. January 31,
1912. H. I. Mulcrevy, Clerk. By John F. Mooney,
Deputy Clerk.

*In the Superior Court of the City and County of
San Francisco, State of California.*

No. 36,081.

Dept. No. 8.

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Demurrer to Amended Answer.

Now comes the plaintiff and—

1. Demurs to the amended answer filed by the [53] defendant herein on the ground that said amended answer does not state facts sufficient to constitute a defense to said action.

2. Demurs to the first separate defense to the first cause of action set out in said complaint on the ground that the allegations thereof are not sufficient to constitute a legal defense to said first cause of action.

3. Demurs to the second separate defense to the first cause of action set out in said complaint on the ground that the allegations of said second separate answer do not constitute a legal defense to the first cause of action.

4. Demurs to the separate defense to the second cause of action set out in said complaint on the

ground that the allegations thereof do not constitute a legal defense to said second count.

W. S. ANDREWS,
Attorney for Plaintiff.

I hereby certify that the foregoing demurrer is in my opinion sound in law.

W. S. ANDREWS.

[Endorsed]: Filed in open court January 31, 1912.
H. I. Mulcrevy, Clerk. By John F. Mooney, Deputy
Clerk. [54]

*In the Superior Court of the City and County of San
Francisco, State of California.*

No. 36,081.

Dept. No. 8.

NORTHERN LIGHT MINING COMPANY, a Cor-
poration,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Motion to Strike Out.

Now comes the plaintiff in the above-entitled action and moves the Court for an order striking out the following portions of the amended answer filed by the defendant herein, to wit:

1. The whole of the first alleged separate defense to the first count of the complaint filed herein.

2. The whole of the second alleged separate defense to the first count of the complaint filed herein.

3. The whole of the alleged separate defense to the second count of the complaint herein.

This motion is made on the ground that the allegations contained in said defenses and each of them, are immaterial and irrelevant and do not constitute a legal [55] defense to this action.

W. S. ANDREWS,
Attorney for Plaintiff.

[Endorsed]: Filed in Open Court, January 31, 1912.
H. I. Mulcrevy, Clerk. By John F. Mooney, Deputy
Clerk.

*In the Superior Court of the City and County of San
Francisco, State of California.*

No. 36,081.

Dept. No. 8.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

**Motion for Judgment on the First Count on the
Pleadings.**

Now comes the plaintiff in the above-entitled action and moves the Court for judgment on the first cause of action set out in the complaint on the pleadings.

This motion is made on the ground that the material allegations of said first cause of action as set out in the complaint herein are admitted by the amended answer of the [56] defendant, and that the first and second separate defenses alleged by defendant to said first cause of action do not constitute legal defense to said first cause of action.

W. S. ANDREWS,
Attorney for Plaintiff.

[Endorsed]: Filed in Open Court, January 31, 1912.
H. I. Mulcrevy, Clerk. By John F. Mooney, Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

No. 36,081.

Dept. #8.

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Answer to Amended Complaint.

Comes now the defendant above named, and for answer to the Amended Complaint of plaintiff filed herein, states: [57]

I.

That it admits the allegations contained in paragraph I of the first cause of action of said Amended Complaint.

II.

Answering paragraph II of the said first cause of action, admits that it is, and at all times mentioned in said Amended Complaint was, a corporation organized and existing under and by virtue of the laws of the District of Alaska but denies that it is now doing, conducting or carrying on business in the State of California, or at any time mentioned in said Amended Complaint, or at any other time has carried on, conducted or done business in the State of California.

III.

Answering paragraph II of said first cause of action, admits the allegations contained in said paragraph.

IV.

Answering paragraph IV of said first cause of action admits the allegations contained in said paragraph.

V.

Answering paragraph V of said first cause of action admits the allegations contained in said paragraph, except that allegation therein contained to the effect that defendant agreed in said lease to work and mine the said premises described in the Amended Complaint during the full term of said lease, and this allegation defendant denies.

VI.

Answering paragraph VI of said first cause of action [58] defendant denies that plaintiff was entitled under its said contract, or otherwise, to the sum of \$21,500.51, or any other sum in excess of

\$18,888.83, which said sum last aforesaid defendant alleges was paid to plaintiff and by plaintiff accepted, and denies that there is now due, owing or unpaid to plaintiff from defendant the sum of \$2611.68, or any other sum or sums whatever.

For a first, further and separate defense to the first cause of action of plaintiff, defendant alleges:

I.

That the defendant herein, on or about the 13th day of August, 1909, notified plaintiff that it proposed to move its said steam dredger "Alpha" off the placer mining claims named in plaintiff's Amended Complaint, and to cease mining thereon.

That after defendant had notified plaintiff of its intention to remove its dredger from said premises, and while defendant was actually engaged in the moving of its said dredger off the said placer mining claims, plaintiff, through its agent thereunto duly authorized, employed defendant to work out and extract the gold and gold-dust from certain small pieces or blocks of unworked ground which had been left unworked by plaintiff in its theretofore mining operations upon said placer claims, and which were covered with tailings and tailing [59] piles; and in this connection plaintiff agreed to pay and deliver to defendant as compensation for working and mining out said small pieces or blocks of unworked ground, eighty (80%) per cent of the gross product of gold derived therefrom.

III.

That defendant accepted said employment offered by plaintiff, and thereupon proceeded and did work

out said pieces or blocks of unworked ground, and extracted gold and gold-dust therefrom of the gross value of about \$13,545.36, and delivered said gross product to plaintiff, and out of said gross product plaintiff paid and delivered to defendant eighty (80%) per cent of the value thereof, in accordance with and in pursuance of the said contract of employment entered into between plaintiff and defendant in this behalf; and thereupon said employment with reference to the work upon said small pieces or blocks of unworked ground was fully executed and terminated.

For a second further and affirmative defense to the first cause of action of plaintiff, defendant alleges:

I.

That by an old well-established, well-known and universal custom and usage of and among miners throughout the District of Alaska, in all cases in which one leases to another mining ground with the right and privilege of extracting therefrom gold and gold-dust upon a royalty basis, [60] if nothing is contained in the leasing contract evidencing with certainty an intention upon the part of the parties to the lease that the lessee shall continue to operate and mine the premises for the full term for which the lease is given, a lessee is not and cannot be required to remain upon and continue to operate and mine the ground so leased during the whole of term fixed in the lease, but it is at all times the right and privilege of such lessee to leave and quit the premises leased and to cease operating and min-

ing thereon at any time such lessee sees fit so to do; and the said contract of lease sued upon in this action was entered into by the respective parties thereto with reference to and in accordance with the recognition of said custom and usage.

And for answer to the separate and second cause of action in plaintiff's Amended Complaint filed herein, defendant

I.

Refers to the statements contained in paragraphs I, II, III, IV and V of this Answer, to the first cause of action of said Complaint, and makes the same a part hereof, as though fully set forth at length herein.

II.

Denies that plaintiff has been damaged in the sum of Twenty Thousand (\$20,000) Dollars, or any other sum whatsoever, for failure or default of defendant to work the afore-described claims, or to carry out the terms of said contract, [61] or to continue mining on said property, or by reason of any other act or default of defendant, or its agents, and defendant alleges that it has in all respects complied with the terms, conditions and requirements of the said contract and lease, to be by it kept, performed and complied with.

For a second and further and separate defense to the second cause of action of plaintiff's Amended Complaint, defendant alleges:

I.

That by an old, well established, well known and universal custom and usage of and among miners

throughout the District of Alaska in all cases in which one leases to another mining ground with the right and privilege of extracting therefrom gold and gold-dust upon a royalty basis, if nothing is contained in the leasing contract evidencing with certainty an intention upon the part of the parties to the *lease*, that the lease shall continue to operate and mine the premises for the full term for which the lease is given, a lessee is not and cannot be required to remain upon and continue to operate and mine the ground so leased during the whole of the term fixed in the lease, but it is at all times the right and privilege of such lessee to leave and quit the premises leased and to cease operating and mining thereon at any time such lessee sees fit so to do; and the said contract [62] of lease sued upon in this action was entered into by the respective parties thereto with reference to, in accordance with, and recognition of said custom and usage.

WHEREFORE, defendant prays to go hence with its costs herein expended.

FINK and WHITE,
Attorneys for Deft.

WM. M. C.
D. C. C.

State of California,
City and County of San Francisco,—ss.

Jafet Lindeberg being first duly sworn, deposes and says: That he is the president of the Blue Goose Mining Company, a corporation, defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that

the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

Subscribed and sworn to before me, this 29th day of January, 1912.

JAFET LINDEBERG,

[Notarial Seal]

FLORA HALL,

Notary Public in and for the City and County of
San Francisco, State of California.

San Francisco, Calif., January, 1912. [63]

IT IS HEREBY STIPULATED AND
AGREED between the parties to the within entitled
action, that the foregoing Amended Answer may be
filed by the defendant within named, and as though
leave of Court therefor had been first had and ob-
tained.

W. S. ANDREWS,

Attorneys for Plaintiff,

FINK & WHITE,

Attorneys for Defendant.

[Endorsed]: Filed in open court, January 30,
1912. H. I. Mulcrevy, Clerk. By John F. Mooney,
Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

No. 36,081.

Dept. #8.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Answer.

Comes now the defendant, and for answer to plain-
tiff's [64] Second Amendment to its second count
of its Amended Complaint.

I.

Refers to the statements contained in paragraphs
I, II, III, IV and V of its Answer to the first cause
of action of said Complaint, and makes the same a
part hereof, as though fully set forth at length
herein.

II.

Admits the allegations contained in paragraph
#II of plaintiff's second amendment to its second
count of its Amended Complaint, except the allega-
tion therein contained to the effect that the mining
done by defendant for a period of five days, between
the 12th day of August and the 1st day of September
was done under or pursuant to said lease, which alle-
gation defendant denies.

III.

Alleges that it has no information or belief sufficient to enable it to answer the allegation that the formation of the bed-rock of said remaining ground was such that the said dredger *could* work out, and that it was practical to float said dredger on this remaining ground, and to work it from rim to rim, and therefore denies that the formation of the bed-rock of said remaining ground was such that said dredger could work it, or that it was practical to float the said dredger on said remaining ground, or

W. M. Mc
D. C. C. to work it from rim to rim, or otherwise.

IV.

Denies that defendant fully or otherwise failed to [65] perform its said agreement, and alleges that it has no information or belief sufficient to enable it to answer the allegation as to

Wm. M. C.
D. C. C. the amount of gold defendant would have mined and dredged between the 12th day of August, 1909, and the last day of the working season of the year 1909, if it had continued to mine and dredge upon said premises, and therefore denies that it would have extracted, mined or dredged an amount of gold of the value of \$52,260, or of any other sum or value whatever, and denies that it has taken out during the season of 1909, prior to September 1st, 1909, \$62,084.64, or any other sum whatever, but admits that it had during the said time taken out and extracted gold of the value of said sum, but denies that said gold so extracted was extracted under and by virtue of the terms of said lease, other than gold of the value of \$48,539.28, and alleges that it

has no information or belief sufficient to enable it to answer the allegation that plaintiff would have received the sum of \$20,904, from the defendant if the defendant had mined the afore-described premises for the full season of 1909, and therefore denies that plaintiff would have received the sum of \$2094, or any other sum whatever from defendant.

V.

Denies that during the term of the aforesaid lease or at any other time, and up to the 12th day of August, 1909, or at any other time, defendant did not work or dredge the premises leased from rim to rim, and denies that defendant picked out the rich paying gravel, or worked the same, and denies that defendant avoided the low grade ground, but on [66] the contrary alleges that at all times during which defendant operated upon said premises, prior to the 12th day of August, 1909, it did work said premises clean from rim to rim in a miner-like manner and in accordance with the terms of its said contract.

VI.

Alleges that it has no information or belief sufficient to enable it to answer the allegation that since the defendant abandoned the afore-described premises on August 12th, 1909, the plaintiff has endeavored continuously ever since that date to the best of its ability to secure someone else to work said property, but has not been able to do so, and therefore denies that plaintiff has since the 12th day of August, 1909, or at all, endeavored to the best of its ability or at all, to secure someone else

Wm. Mc
D. C. C.

to work said property; and denies that plaintiff has not been able to secure someone

else to work said property; and alleges that it has no information or belief sufficient to enable it to answer the allegation that the greatest royalty that plaintiff could have obtained from anyone either on the 12th day of August, 1909, or on the 1st day of September, 1909, to the present time, was and is 10% of the gross amount of gold extracted from the premises, and therefore denies that the greatest royalty that plaintiff could have obtained from anyone, either on the 12th day of August, 1909, or on the 1st day of September, 1909, or at any time since August 12th, 1909, to the present time, is or was 10% of the gross amount of gold [67] extracted from the premises; and alleges that it has no information or belief sufficient to enable it to answer the allegation that 10% was at said times, and is now the marked rental value of said premises, expressed in terms of royalty paid on the gross amount of gold taken out and therefore denies that 10% was at said dates, or is now the market rental value of said premises, expressed in terms of royalty, or otherwise paid on the gross amount of gold taken out, and alleges that it has no information or belief sufficient to enable it to answer the allegation that the greatest royalty that plaintiff can possibly obtain in the future from anyone for working said premises is 10% of the gross amount of gold extracted, and therefore denies that the greatest or other royalty that plaintiff can possibly or otherwise obtain in the future from any-

one for working said premises is 10% of the gross amount of gold extracted, and alleges that it has no information or belief sufficient to enable to answer the allegation that in other words the greatest royalty which the plaintiff could have obtained on August 12th, 1909, or on the 1st day of September, 1909, or at any time since then, and indeed the greatest royalty which plaintiff can obtain in the future from anyone for working with a dredge the same ground and the same area of ground which the defendant would have worked if it had fully performed its agreement, and had worked the entire season of 1909, is \$5,226, and therefore denies that in other words, or otherwise the greatest or other royalty which plaintiff could have obtained on August 12th, 1909, or on the 1st day of September, 1909, or at any time since then, [68] or in the future from anyone working with a dredge or otherwise, the same ground, or the same area of ground which the defendant would have worked if it had continued to operate thereon, and had worked the entire season of 1909, is \$5,226, or any other sum, and denies that it in any way failed to fully or otherwise perform its agreement.

VII.

Denies that the remaining virgin ground cannot be worked by any other method than a dredger, and denies that it cannot be worked at a profit to plaintiff greater than 10% of the gross amount of gold that can be extracted; and denies that it would be impossible to install a suitable and adequate dredger on the premises, and denies that it would be impossi-

ble to work the said premises at a profit.

VIII.

Denies that defendant has broken its said lease, and denies that plaintiff has been damaged by defendant in the sum of \$15,678, or in any other sum or sums whatever, and denies that \$5226 is the best royalty obtainable by plaintiff from any one else to work said property; and alleges that it has in all respects complied with the terms, conditions and requirements of the said contract and lease to be by it kept, performed and complied with.

For a second further affirmative and separate [69] defense to plaintiff's second amendment to its second count of its Amended Complaint, defendant alleges:

I.

That by an old, well established, well known and universal custom and usage of and among miners throughout the District of Alaska in all cases in which one leases to another mining ground with the right and privilege of extracting therefrom gold and gold-dust upon a royalty basis, if nothing is contained in the leasing contract evidencing with certainty an intention upon the part of the parties to the lease, that the lessee shall continue to operate and mine the premises for the full term for which the lease is given, a lessee is not and cannot be required to remain upon and continue to operate and mine the ground so leased during the whole of the term fixed in the lease, but it is at all times the right and privilege of such lessee to leave and quit the premises leased and to cease operating and mining

thereon at any time such lessee sees fit so to do; and the said contract of lease sued upon in this action was entered into by the respective parties thereto with reference to, in accordance with, and recognition of said custom and usage.

II.

That during the years 1905, and 1906, defendant had been operating its steam dredge "Alpha" upon certain mining claims belonging to plaintiff, lying south of and adjoining Number 2 Below, and the Eureka Bench on Ophir Creek, under a contract with plaintiff, similar in its terms and conditions to that executed on the 10th day of May, 1907, and set forth in plaintiff's [70] Complaint herein.

III.

That the gravels contained in and upon said mining claims upon which defendant had been operating during said years of 1905 and 1906, as hereinbefore set forth, were of the average value of not to exceed 60¢ per cubic yard.

IV.

That plaintiff and defendant had found and discovered from the actual operation of said steam dredge "Alpha" during said years 1905 and 1906, that said gravels could not be mined and washed by said dredge "Alpha" at a reasonable profit to plaintiff and defendant.

V.

That in order to place said dredge "Alpha" upon gravels which were believed to contain higher and greater values than those contained within and upon the mining claims theretofore operated as hereinbe-

fore set forth, the contract theretofore existing between plaintiff and defendant was by mutual consent abandoned prior to the expiration of its terms, and that of May 10th, 1907, executed in lieu thereof.

VI.

That the largest individual stockholders of plaintiff were also the largest individual stockholders of defendant and the president and superintendent of plaintiff was a director of defendant, and the general agent and attorney in fact of plaintiff was also the general agent and attorney in fact and managing director of defendant, and as such attorney in fact [71] of defendant signed its name to, and in its behalf, executed the contract of May 10, 1907, for the uses and purposes herein set forth.

VII.

That prior to May 10, 1907, defendant had never prospected upon, or made any estimate of values contained in the mining claims of plaintiff lying north of Number 3 Below Discovery on Ophir Creek, and had no knowledge or belief as to the values therein contained other than a belief based wholly upon the knowledge and representations of the agents, officers and directors of plaintiff.

VIII.

That the subject matter of said contract of May 10, 1907, was the gravels contained upon and within the mining claims of plaintiff lying north of Number 3 Below Discovery on Ophir Creek, and believed by plaintiff and defendant, and represented by plaintiff and defendant, to contain greater and higher values than those existing upon the lower claims

upon which defendant had theretofore been engaged in operating, as hereinbefore set forth.

IX.

That the purpose of the contract of May 10, 1907, set forth in plaintiff's complaint was to secure the removal of said steam dredger "Alpha" from mining claims where it had been found and discovered that said dredger could not be operated at a reasonable mutual profit by reason of the lack of values in the gravels therein contained to the mining claims [72] higher up Ophir Creek, where it was believed that gravels of greater and higher values were contained.

X.

That in its operation upon the mining claims of plaintiff up to the 12th day of August, 1909, defendant mined and operated at the precise and exact *sppts* and in the manner it was directed so to do by the Superintendent and President of defendant, and its agent and attorney in fact, and in the conduct of said mining operations worked all of said gravels clean up to and including all portions of the rim where it was practical to float said dredger.

XI.

That at the time of the execution of said contract of May 10th, 1907, it was well known to plaintiff and defendant that the utmost capacity of said dredge did not and could not exceed 100,000 cubic yards per annum, said knowledge being based upon the actual operation of said dredge during the season of 1905 and 1906.

XII.

That defendant ceased operations upon said mining claims of plaintiff, because it had mined, operated and mashed all the gold-bearing gravels therein contained, which defendant could mine or wash at a reasonable or any profit to itself.

XIII.

That the gravels contained in and upon the mining claims of plaintiff left unmined and unwashed by defendant can by the expenditure of a reasonable sum of money by plaintiff [73] be mined and operated by plaintiff at a cost to plaintiff of not to exceed $12\frac{1}{2}\text{¢}$ per cubic yard, and that from such mining and operating plaintiffs can and will receive a larger and greater profit than it could or would have received from any royalty or royalties paid by defendant to plaintiff under said contract of May 10, 1907, had defendant continued to mine and operate thereunder.

WHEREFORE, defendant prays that plaintiff take nothing by its complaint herein, and that defendant be hence dismissed with costs.

FINK & WHITE,
Attorneys for Defendant.

State of California,

City and County of San Francisco,—ss.

Jafet Lindeberg being first duly sworn, deposes and says: That he is the president of the Blue Goose Mining Company, a corporation, defendant in the above-entitled action; that he has read the foregoing Answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information

or belief, and as to those matters he believes it to be true.

Subscribed and sworn to before me, this 13th day of February, 1912.

JAFET LINDEBERG.

[Notarial Seal] FLORA HALL,
Notary Public in and for the City and County of
San Francisco, State of California. [74]

[Endorsed on Back]: Receipt of copy hereof admitted Feb. 13, 1912.

W. S. ANDREWS,
A. H. BRANDT,
Attorneys for Plaintiff.

No. 36,081. Dept. 8 in the Superior Court of the State of California in and for the City and County of San Francisco. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant. Answer. Filed in Open Court February 13, 1912. H. I. Mulcrevy, Clerk. By John F. Mooney, Deputy Clerk. [75]

*In the Superior Court of the State of California in
and for the City and County of San Francisco.*

No. 36,081.

Dept. 8.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Crpora-
tion,

Defendant.

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on January 30th, 1912, in the above-entitled court, a jury trial having been expressly waived by a written stipulation between the parties herein. W. S. Andrews, Esq., and A. H. Brandt, Esq., appeared as counsel for the plaintiff and Messrs. Fink & White appeared on behalf of the defendant. It appearing to the Court that the defendant had been regularly served with a copy of the summons and complaint in said cause, in the City and County of San Francisco, State of California, and that the defendant had duly appeared, by filing a demurrer and answer in said action and had not objected to the jurisdiction of said court, the Court proceeded to hear said cause. Whereupon the plaintiff moved the Court for judgment on the pleadings on the first cause [76] of action contained in the complaint on file herein and

the first amended answer thereto. After due consideration the Court granted said motion and ordered judgment to be entered on said first cause of action as prayed for in the complaint. Thereupon the parties proceeded to trial on the second cause of action and the Court having heard the evidence of the respective parties and considered the same, and the cause having been submitted, after argument, to the Court for its decision, the Court now finds the following facts on the said second cause of action:

I.

That the plaintiff is and was at all times involved herein, a corporation organized and existing under and by virtue of the laws of the State of California.

II.

That the defendant is, and at all times involved herein, was a corporation organized and existing under and by virtue of the laws of the District of Alaska.

III.

That on the 10th day of May, 1907, in the City and County of San Francisco, State of California, the plaintiff and defendant entered into and executed a written agreement or lease, a copy of which is attached to the original complaint on file herein, and marked exhibit "A."

IV.

That after the execution and delivery of said lease, [77] the defendant entered upon the premises described in said lease and in said complaint, and commenced mining thereon, under and in pursuance of the terms of the aforesaid agreement or lease, with

its dredger known as the "Alpha," and continued mining on said premises during the mining seasons of 1907 and 1908; that on May 20th, 1909, the defendant again commenced mining the said premises, with its dredger known as the "Alpha," and continued so mining under the terms of said agreement or lease, until the 12th day of August, 1909; that on that date without the consent of the plaintiff, the defendant commenced to move its dredger known as the "Alpha" off said premises, and thereafter discontinued dredging and mining the premises described in said agreement or lease, with the exception of a period of five (5) days between the 12th day of August, 1909, and the 1st day of September, 1909, during which period it worked under said agreement or lease; that on the 1st day of September, 1909, the defendant moved its dredger off the premises described in said agreement or lease, without the consent of the plaintiff, and that from said time, the defendant has refused to enter upon said property, and mine the same, and that the defendant has not in any way or in any manner, since the 12th day of August, 1909, except as aforesaid, done any mining on said property.

V.

That at the time the defendant commenced to remove its dredger off said premises, on the 12th day of August, 1909, and also on the 1st day of September, 1909, there still remained [78] over seventy thousand (70,000) cubic yards of gold-bearing gravel and ground, which had not yet been worked and was still virgin ground and which was included in the

premises leased by the defendant from the plaintiff as aforesaid; that water was available to float the dredger known as the "Alpha" to work this ground; that the formation of the bed-rock and the character of said ground was such that the dredger could work it, and that in short it was practical to float the dredger on this remaining ground and to work it from rim to rim.

IV.

That the last day of the working season for the year 1909, was October 24th, and that there remained after August 12th, 1909, sixty-seven (67) working days during which the defendant could have mined the premises leased, if it had continued operations.

VII.

That the capacity of the dredger known as the "Alpha" was and is one thousand (1,000) cubic yards per day of twenty-four (24) hours, and that it was possible and was the custom to work twenty-four (24) hours a day in mining on this property.

VIII.

That the value of the gold-bearing gravel and ground remaining unworked after August 12th, 1909, and September 1st, 1909, and which could have been mined by the defendant if it had continued dredging, is fifty (50) cents a cubic yard. [79]

IX.

That during the period that the defendant mined in the season of 1909, it extracted under said agreement or lease, from the premises, gold of a value greater than Fifty Thousand dollars (\$50,000).

X.

That during the term of the aforesaid agreement or lease and up to August 12th, 1909, the defendant did not work and dredge the premises leased from rim to rim, but mined the high-grade gravel and avoided the low-grade ground; that on August 12th, 1909, when the defendant had mined the high-grade ground, it thereupon without the consent of plaintiff, abandoned the premises and refused to continue mining.

XI.

That since the defendant abandoned the premises on August 12th, 1909, the plaintiff has endeavored continuously, to the best of its ability, to secure some one else to work said property, but without success; that the greatest royalty that the plaintiff could have obtained from anyone for working the ground remaining, with a dredger or by any other method, either on August 12th, 1909, or September 1st, 1909, or at any time since August 12th, 1909, till the present time is fifteen per cent (15%) of the gross amount of gold extracted from the premises; that fifteen per cent (15%) was on August 12th, 1909, and ever since *the*, has been the market and reasonable rental value of the mining claims remaining unworked, described in said agreement or lease, expressed in terms of royalty paid on the gross amount of the gold taken out; that the greatest [80] royalty that the plaintiff possibly can obtain in the future by working said remaining ground is fifteen per cent (15%) of the gross amount of gold extracted.

XII.

That the aforesaid remaining ground cannot be worked with a dredger or by any other method by plaintiff at a profit greater than fifteen per cent (15%) of the gross amount of gold that can be extracted; that the plaintiff does not own a dredger and that it would be impossible for it to install a suitable and adequate dredger on the aforesaid described premises and work the same at any profit. That it is not true that the gravel contained in and upon the mining claims of plaintiff left unmined and unwashed by defendant can by the expenditure of a reasonable sum of money by plaintiff, be mined and operated by plaintiff at a cost to plaintiff of not to exceed twelve and one-half cents per cubic yard. That it is not true that from such mining and operating plaintiff can and will receive a larger and greater profit than it could or would have received from any royalty or royalties paid by defendant to plaintiff under said contract of May 10th, 1907, had defendant continued to mine and operate thereunder.

XIII.

That if the defendant had fully performed its agreement and had mined the premises leased, for the remainder of the season of 1909, it would have extracted gold in the value of Thirty-three Thousand Five Hundred Dollars (\$33,500), of which the plaintiff would have been entitled to forty per cent [81] (40%). That through the failure of the defendant to perform its agreement, the plaintiff has been damaged in the amount of twenty-five per cent

(25%) of said Thirty-three Thousand Five Hundred Dollars (\$33,500) or Eight Thousand Three Hundred and Seventy-five Dollars (\$8375).

XIV.

That since August 12th, 1909, the said premises have not been mined and no gold has been taken out of the same, except the gold that was taken out by the defendant during the five (5) days that it worked between August 12th, 1909 and September 1st, 1909.

XV.

That during the time that the defendant operated under said agreement or lease, up to August 12th, 1909, it netted great profit to itself through said operations and that if the defendant had continued operating during the remainder of the season of 1909, and had carried out its contract it would have made a reasonable profit by so doing.

AS CONCLUSIONS OF LAW FROM THE
Wm. M. C. FOREGOING FACTS, THE COURT
D. C. C. HEREBY FINDS AND DECIDES:

That the plaintiff is entitled to judgment on the second count of its complaint in the sum of Eight Thousand Three Hundred and seventy-five Dollars (\$8,375), together with interest thereon at
Wm. M. C. the rate of seven per cent (7%) per annum
D. C. C. from the date of filing the complaint herein, namely, [82] June 2, 1911, together with costs of suit, and judgment is hereby ordered to be entered accordingly.

GEO. A. STURTEVANT,
Judge.

Dated March 22d, 1912.

[Endorsed]: Filed Mar. 26, 1912. H. I. Mulcrevy, Clerk. By W. J. Egan, Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

No. 36,081.

Dep. 8.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Judgment.

D. 3/26/12. 15. C. H.—P. M.

This cause of action came on regularly for trial on [83] the 30th day of January, 1912, W. S. Andrews, Esq., and A. H. Brant, Esq., appearing as counsel for the plaintiff and Messrs. Fink & White, appearing as counsel for the defendant and trial by jury having expressly waived in writing by the counsel for the respective parties, the cause was tried before the court, sitting without a jury. Whereupon a number of witnesses were examined on the part of plaintiff and on the part of the defendant and the evidence being closed, the cause was submitted to the Court for consideration and decision, and after due deliberation thereon, the Court delivers its findings and decision in writing, which is filed, and orders that judgment be entered as follows:

I.

That judgment on the pleadings be entered on the first count as prayed for on that count.

II.

That judgment be entered on the second count in accordance with the findings and decision in writing on file herein.

WHEREFORE, by reason of the law and findings aforesaid, IT IS ORDERED AND ADJUDGED, that the Northern Light Mining Company, a corporation, the plaintiff, do have and recover of and from the Blue Goose Mining Company, a corporation, the defendant, on the first count in said complaint, the sum of Two Thousand Six Hundred and Eleven Dollars and Sixty-eight Cents (\$2611.68) with interest thereon at the rate of seven per cent (7%) per annum from the 2d day of June, 1911, [84] and that the plaintiff have judgment on the second count for the sum of Eight Thousand Three Hundred and Seventy-five Dollars (\$8375) together with interest at the rate of seven per cent (7%) per annum from the 2d day of June, 1911, together with said plaintiff's costs and disbursements incurred in said action, as per cost bill \$55.

GEO. A. STURTEVANT,

Judge.

Dated March 22d, 1912.

Recorded Book 53, page 214. March 26, 1912.

Filed Mar. 26, 1912. H. I. Mulcrevy, Clerk. By Wm. J. Egan, Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

State of California,

City and County of San Francisco,—ss. [85]

I, H. I. Mulcrevy, County Clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled cause, and recorded in Judgment Book 53 of said court at page 214, and I further certify that the foregoing papers hereto annexed constitute the Judgment-roll in said cause.

WITNESS my hand and the seal of said Superior Court this 26th day of March, A. D. 1912.

[Seal]

H. I. MULCREVY,

Clerk.

By S. E. P. Taylor,

Deputy Clerk.

[Endorsed on Back]: D. County Clerk. Judgment Dept. F. 30. No. 36,081. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant.

Judgment-roll. Filed March 26th, 1912. H. I. Mulcrevy, Clerk. By S. E. P. Taylor, Deputy Clerk. Recorded Judgment Book 53, Page 214. 3/26/12. [86]

In the District Court of Appeal of the State of California, Third Appellate District.

No. 1225.

S. F. No. 6397.

NORTHERN LIGHT M. COM.,

Plff. and Respt.,

vs.

BLUE GOOSE M'NG. CO., (a Corp.)

On Appeal from the Superior Court in and for the County of San Francisco.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the Court herein is delivered by Justice Burnett.

Whereupon, it is ordered, adjudged and decreed by the Court that the judgment of the Superior Court in and for the County of San Francisco in the above-entitled cause, be and the same are hereby affirmed.

(Respondent to recover costs.)

I, W. M. Lowell, Clerk of the District
Wm. M. C. Court of Appeal of the State of California,
D. C. C.
in and for the Third Appellate District, do hereby certify that the foregoing is a true copy of an

original judgment entered in the above-entitled cause on the 7th day of August, 1914, and now remaining of record in my office.

WITNESS my hand and the seal of the court, affirmed [87] at my office, this 8th day of October, A. D., 1914.

W. M. LOWELL,
Clerk.

By _____,
Deputy.

[Seal of the District Court of Appeal.]

[Endorsed on Back]: Oct. 9, 1914. 36,081. No. 1225. In the District Court of Appeal, State of California. Third Appellate District. Remittitur. M. Light Mn'g. Co. (a Corp.), vs. Blue Goose Mng. Co. (a Corp.) Filed Oct. 9, 1914. H. I. Mulcrevy, Clerk. By J. F. Dunworth, Deputy Clerk.

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

DEPARTMENT No. 8.

No. 36,081.

NORTHERN LIGHT MINING COMPANY, a Corporation, [88]

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Certificate of County Clerk to Judgment-roll, etc.

I, H. I. Mulcrevy, County Clerk of the City and County of San Francisco, and ex-officio clerk of the Supreme Court of the State of California, in and for the City and County of San Francisco, do hereby certify the foregoing to be a full, true, and correct copy of the original complaint: Plaintiff's amendment to second count of complaint, plaintiff's second amendment to second count of amended complaint, demurrer to amended answer, motion to strike out, motion for judgment etc., answer to amended complaint, answer; findings of fact and conclusions of law, judgment; certificate to judgment-roll, remittitur from the District Court of Appeal on file and of record in my office in the above-entitled cause. That the same constitute a full and complete exemplification of the judgment-roll, remittiture and opinion in said cause, and of the whole thereof.

All of which I have caused to be exemplified according to the Act of Congress.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, this twenty-fourth day of May, A. D., 1916.

H. I. MULCREVY,
County Clerk and Ex-officio Clerk of the Superior Court.

[Seal of the Superior Court.]

I, Geo. H. Cabaniss, presiding Judge of the Superior Court of the State of California in and for the City and County of San Francisco, do hereby certify that said Court is a court [89] of record having

a clerk and seal. That H. I. Mulcrevy who has signed the annexed attestation, is the duly elected and qualified county clerk of the City and County of San Francisco, and was, at the time of signing said attestation, ex-officio clerk of said Superior Court. That said signature is his genuine handwriting, and that all his official acts as such clerk, are entitled to full faith and credit.

And I further certify that said attestation is in due form of law.

WITNESS my hand this 24th day of May, A. D. 1916, A. D. 190—.

GEO. H. CABANISS,

Presiding Judge of the Said Superior Court.

State of California,

City and County of San Francisco,—ss.

I, H. I. Mulcrevy, County Clerk of the City and County of San Francisco, and ex-officio clerk of the Superior Court of the State of California, in and for the City and County of San Francisco, do hereby certify that the Honorable Geo. H. Cabaniss, whose name is subscribed to the preceding Certificate, is presiding Judge of the Superior Court of the State of California, in and for the City and County of San Francisco, duly elected and qualified, and that the signature of said Judge to said Certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court, [90] this 24th day of May, A. D. 1916.

H. I. MULCREVY,

County Clerk and Clerk of the Superior Court.

[Seal of the Superior Court.]

[Thirty Cents Int. Stamps Cancelled.]

[Endorsed]: No. 36,081. In the Superior Court of the State of California, in and for the City and County of San Francisco, Department No. 8. Northern Light Mining Co., a Corporation, Plaintiff, vs. Blue Goose Mining Co., a Corporation, Defendant. Exemplification of Record.

[Endorsed]: #2616. In the District Court, Territory of Alaska, Second Division. N. L. Min. Company, Plaintiff, vs. Blue Goose M. C. Plt's Ex. 3, Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By —————, Deputy. [91]

Mr. ORTON.—I now offer in evidence as "Exhibit No. 4" the exemplified copy of the Notice of Appeal which appears on Page 67 of this exemplified transcript, and as "Exhibit No. 5," the Notice of Appeal from the order denying a new trial contained on page 196 of this transcript.

Mr. LOMEN.—We object to the introduction of this evidence on the ground that it is irrelevant, incompetent and immaterial.

The COURT.—The objection overruled.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Said papers being received and read in evidence and marked "Plaintiff's Exhibits No. 4 and No. 5" and which are as follows:

**Plaintiffs' Exhibit No. 5—Notice of Appeal in
Northern L. M. Co. v. Blue Goose Co.**

*In the District Court, Territory of Alaska, Second
Division.*

#2616.

N. L. MIN. CO.,

Plaintiff,

vs.

BLUE GOOSE M. CO.,

Defendant.

Plt's. Ex. 4. Def's. Ex. Filed July 17, 1916. G.
A. Adams, Clerk. By ———, Deputy. [92]

[Title of Court and Cause.]

NOTICE OF APPEAL FROM JUDGMENT.

To Northern Light Mining Co., a Corporation, Plain-
tiff; and to W. S. Andrews, Esq., and A. H.
Brandt, Esq., Its Attorneys:

Pleas take notice that the Blue Goose Mining Co.,
a corporation, defendant in the above-entitled action,
hereby appeals to the Supreme Court of the State
of California from the judgment made and entered
in said Superior Court in said action on the 22d day
of March, 1912, in favor of said plaintiff and against
said defendant on the first count of the complaint filed
therein for the sum of \$2611.68, with interest thereon,
at the rate of 7% per annum from the 2d day of
June, 1911, and on the second count of the said com-
plaint for the sum of \$8375, together with interest
thereon at the rate of 7% per annum from the 2d

day of June, 1911, together with plaintiff's costs and disbursements incurred in said action.

Said appeal is taken from the whole of said judgment.

Dated at San Francisco, California, May 6, 1912.

FINK & WHITE,

Attorneys for Defendant.

Due service of the foregoing Notice of Appeal and receipt of copy thereof, is hereby admitted this 6th day of May, 1912.

W. S. ANDREWS, [93]

A. H. BRANDT,

Attorneys for Plaintiff.

Filed May 10, 1912. H. I. Mulcrevy, Clerk.
Frank H. Brunner, Deputy Clerk.

[Title of Court and Cause.]

NOTICE OF APPEAL FROM ORDER
DENYING A NEW TRIAL.

To the Clerk of Said Court, and to Northern Light Mining Company, a Corporation, Plaintiff, Above Named, and Its Attorneys W. S. Andrews, Esq., and A. H. Brandt, Esq.:

You and each of you will please take notice that the defendant in the above-entitled suit, hereby appeals to the Supreme Court of the State of California, from the order of the Superior Court of the State of California, in and for the City and County of San Francisco, given, made and entered herein, on the 30th day of September, 1912, overruling and denying defendant's motion for a new trial, and from the whole of said order.

Dated, October 2d, 1912.

FINK & WHITE,
Attorneys for Defendant. [94]

A copy of the foregoing notice received this 2d day of October, 1912.

W. S. ANDREWS,
A. H. BRANDT,
Attorneys for Plaintiff.

#2616. In the District Court, Territory of Alaska, Second Division. N. L. Min. Co., Plaintiff, vs. B. Goose M. Co., Defendant. Plt's Ex. 5. Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By _____, Deputy.

Said exhibits Nos. 4 and 5, were duly exemplified by the clerk and presiding Judge of the Superior Court of the State of California in and for the City and County of San Francisco, the certificate thereto being dated the 29th day of May, 1915.

Mr. ORTON.—The next thing we will offer will be the exemplified copy of the order of the Supreme Court transferring the case to the District Court of Appeals for hearing, which will be "Exhibit No. 6."

Mr. LOMEN.—We object to the offer on the ground that the same is irrelevant, incompetent and immaterial. [95]

The COURT.—Objection overruled.

To which ruling of the Court defendant duly excepted, and an exception was allowed, said offer being received and read and marked Plaintiff's Exhibit No. 6, and being as follows:

**Plaintiff's Exhibit No. 6—Exemplified Copy of
Order of Supreme Court Transferring Cause to
District Court of Appeals.**

In the Supreme Court of the State of California.

No. —.

**NORTHERN LIGHT MINING COMPANY, a
Corporation,**

Plaintiff and Respondent,

vs.

**BLUE GOOSE MINING COMPANY, a Corpora-
tion,**

Defendant and Appellant.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify the foregoing and attached document to be a full, true and correct copy of the original order transferring the appeal in the above-entitled action from the above-entitled court to the District Court of Appeal of the State of California in and for the Third Appellate District, on file and of record in my office, in the above-entitled action; that the same constitutes a full and complete exemplification of the said order in the said action, and of the whole thereof.

All of which I have caused to be exemplified [96]
according to the act of Congress.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of said Court this 15th day of September, A. D. 1915.

[Seal of the Supreme Court of California.]

B. GRANT TAYLOR,

Clerk of the Supreme Court of California.

[Cancelled Ten-Cent I. R. S.]

I, Frank M. Angellotti, Chief Justice of the Supreme Court of the State of California, do hereby certify that said court is a court of record having a clerk and seal. That B. Grant Taylor, who has signed the annexed attestation, is and was at the time of the signing of said attestation the duly elected and qualified clerk of the said Supreme Court. That said signature is his genuine handwriting and that all his official acts, as such clerk, are entitled to full faith and credit.

AND I further certify that said attestation is in due form of law.

WITNESS my hand this 15th day of September, A. D. 1915.

F. M. ANGELOTTI.

[Cancelled Ten Cent I. R. S.]

State of California,—ss.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the Honorable Frank M. Angellotti, whose name is subscribed to the preceding certificate, is, and was at the time of signing said certificate, the Chief Justice of the Supreme Court of the State of [97] California, duly elected and qualified, and that the signature of said Justice to said certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 15th day of September, A. D. 1915.

B. GRANT TAYLOR,

[Seal of the Supreme Court of California.]

Clerk of the Supreme Court of California.

[Cancelled Ten Cent. I. R. S.]

In the Supreme Court of the State of California.

In Bank.

Friday, January 9, 1914.

By The Court.

The following cases pending in this Court are hereby transferred to the District Court of Appeal of the Third Appellate District for hearing and determination:

S. F. No.

6383 O'Hare v. Lynch, etc.

6387 Smilie v. Smilie.

6388 Giuffre v. Lauricella.

6396 Redgate v. South. Pac. Co.

6397 Northern L. Mg. Co. v. Blue Goose M. Co.

6403 Salo v. Smith.

6405 Cal. Canneries Co. v. Canton Ins. Office.

6409 Koskels etc. v. Albion Lumber Co.

6410 Barry v. Sutter.

6415 Breeze v. International Bk. Corp.

6416 Allen v. Chatfield.

6419 Taber v. Piedmont Hights.

6420 Horton v. Remillard Brick Co.

6422 Buckley v. County of Marin.

6427 Britt v. Kinard.

6428 Bragg v. Martenstein.

- 6440 Miles v. Empire State Surety Co.
6441 Vandercook v. Polk.
6443 Carr v. King. [98]
6445 Cordano v. Kelsey.
6446 Reynolds v. Jackson.
6449 Dibble v. Reliance Life Ins. Co.
6451 Weller v. Brown, et al.
6457 Hart v. Spring Valley Water Co.
6458 Parkin v. Grayson-Owen Co.
6460 Barber Asphalt Co. v. Jurgens.
6463 Grom v. Center.
6406 Slaughter etc. v. Goldberg, Bowen & Co.

[Seal of Supreme Court of California.]

[Endorsed on Back]: #2616. In the District Court, Territory of Alaska, Second Division. N. L. Min. Co., Plaintiff, vs. B. Goose M. Co., Defendant. Plt's Ex. 6. Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By ———, Deputy.

Mr. ORTON.—I now offer exemplified copy in which the judgment and order is affirmed, which will be exhibit "No. 7."

Mr. LOMEN.—We object to the offer on the ground [99] that the same is irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court the defendant duly excepted, and an exception was allowed. Whereupon said offer was received and read in evidence marked Plaintiff's Exhibit No. 7, and is as follows:

**Plaintiff's Exhibit No. 7—Exemplified Copy of
Judgment and Order of District Court of Ap-
peals.**

*In the District Court of Appeal, Third Appellate
District, State of California.*

No. 1225.

**NORTHERN LIGHT MINING COMPANY, a
Corporation,**

Plaintiff and Respondent,

vs.

**BLUE GOOSE MINING COMPANY, a Corpora-
tion,**

Defendant and Appellant.

I, John T. Stafford, Clerk of the District Court of Appeal in and for the Third Appellate District of the State of California, do hereby certify the foregoing and attached document to be a full, true and correct copy of the original order affirming the judgment and order in the above-entitled action made by the Superior Court of the City and County of San Francisco, on file and of record in my office; that the same constitutes a full and complete exemplification of the said order in the said action, and of the whole thereof. [100]

All of which I have caused to be exemplified according to the Act of Congress.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of said Court this 11th day of October, A. D. 1915.

JOHN T. STAFFORD.

Clerk of the District Court of Appeal, Third Appellate District.

[Seal of District Court of Appeal, Third Appellate District.]

I, N. P. Chipman, Presiding Justice of the District Court of Appeal in and for the Third Appellate District, State of California, do hereby certify that said Court is a court of record, having a clerk and seal. That John T. Stafford, who has signed the annexed attestation, is and was at the time of signing said attestation the duly qualified clerk of the said District Court of Appeal. That said signature is his genuine handwriting, and that all his official acts as such clerk are entitled to full faith and credit.

And I further certify that said attestation is in due form of law.

WITNESS my hand this 11th day of October, A. D., 1915.

N. P. CHIPMAN,

P. J.

State of California,—ss.

I, John T. Stafford, Clerk of the District Court of Appeal in and for the Third Appellate District, State of California, do hereby certify that the Hon. N. P. Chipman, [101] whose name is subscribed to the preceding certificate is and was at the time of signing said certificate, the presiding Justice of the District Court of Appeal, Third Appellate District, State of California, duly qualified, and that the sig-

nature of said Justice to said certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 11th day of October, A. D., 1915.

JOHN T. STAFFORD,

Clerk of the District Court of Appeal, Third Appellate District.

[Seal of District Court of Appeal, Third Appellate District.]

[Cancelled 3 Ten Cent I. R. S.]

In the District Court of Appeal in and for the Third Appellate District, State of California.

County, San Francisco, Judge, George A. Sturtevant, Civil 1225. S. F. No. 6397.

NORTHERN LIGHT MINING COMPANY, (a Corp.),

Plff. & Respt.,

vs.

BLUE GOOSE MINING COMPANY, (a Corp.),
Def't. & Appt.

August 7th, 1914. The judgment and order are affirmed,

BURNETT, J. [102]

We concur, Hart, J., Chipman, P. J.

(Respondent to recover costs.)

August 27th, 1914. Filed Petition for rehearing in this court. \$2.50.

September 7th, 1914. Filed Respts. Reply to petition for rehearing in this court.

September 8th, 1914. The petition for rehearing in this court is denied.

I, John T. Stafford, Clerk of the District Court of Appeal in and for the Third Appellate District of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the Judgment entry, in the above-entitled cause, as shown by the records of my office.

WITNESS my hand and the seal of the Court, this 17th day of September, A. D. 1915.

JOHN T. STAFFORD,
Clerk.

By _____,
Deputy.

[Seal of District Court of Appeal, Third Dis.
California.]

[Cancelled Ten Cent I. R. S.]

[Endorsed]: No. 1225. In the District Court, Third Appellate District, State of California. Northern Light Mining Co., a Corporation, Plaintiff, [103] vs. Blue Goose Mining Co., a Corporation, Defendant. W. S. Andrews, Attorney at Law, First National Bank Bldg., Russ Building, San Francisco. Endorsed: #2616. In the District Court, Territory of Alaska, Second Division. N. L. Min. Co., Plaintiff, vs. B. Goose M. Co., Plt's. Ex. 7, Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By _____, Deputy.

Testimony of G. H. Russell, for Plaintiff.

WHEREUPON, Mr. G. H. Russell, a witness produced for and on behalf of the plaintiff, being duly sworn testified as follows:

I am superintendent and manager of the Northern Light Mining Company, and have been such for two years. I know of the judgment that this suit has been brought on, and that the same has not nor has any part of it been paid.

The Northern Light Mining Company paid its annual license due January 1st, 1916. [104]

Cross-examination.

The Northern Light Mining Company is operating on Ophir Creek. The character of its operations is dredge mining. It has dredged on this property situated on Ophir Creek.

Testimony of Ira D. Orton, for Plaintiff.

Mr. IRA D. ORTON, a witness produced for and on behalf of the plaintiff, testified as follows:

I am an attorney at law, and a member of the bar of the State of California. I have been a member of the bar of the State of California for twenty-four years, and have recently practiced in that State. In 1910, I practiced there during the entire winter. I practiced in the United States Circuit Court of Appeals, and was also employed as counsel in cases in the Supreme Court of the State and the District Court of Appeal, I was employed as of counsel in the Reuff case. I was associated with Albert Fink in that case. At that time I was familiar with the Constitution of

(Testimony of Ira D. Orton.)

the State of California—generally familiar with all of it—particularly familiar with parts of it, especially that part of it which establishes the District Court of Appeal and the Supreme Court.

Q. State whether or not the law at that time was as is stated in the certificate offered in evidence.

Mr. COCHRAN.—We object to the question as irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

To which ruling of the Court defendant duly excepted, and an exception was allowed. [105]

A. Yes, sir, these laws were in force at that time. The Constitution as set forth in this exhibit had been in force for some time at that time, and is still in force both referring to the District Court of Appeal and the Supreme Court and the Superior Court; also stated there.

I am familiar with Section 1920 which provides for interest on judgments. That has always been the law there as far as I remember, and was at that time.

Cross-examination.

(By Mr. LOMEN.)

Q. Are you familiar with the statutes of the State of California with reference to provisions in regard to service of process upon defendants?

A. Why, yes, in a general way I am.

Q. Now as far as service upon a foreign corporation is concerned, upon whom can process be served under the Statutes of California?

Mr. GRIGSBY.—Objected to as not proper cross-examination.

(Testimony of Ira D. Orton.)

The COURT.—I sustain the objection to which ruling of the Court the defendant duly excepted, and an exception was allowed.

WHEREUPON the plaintiff rested.

Testimony of J. A. Bachelder, for Plaintiff.

Mr. J. A. BACHELDER, a witness produced for and on behalf of the defendant, testified as follows:

My name is J. A. Bachelder. I know the corporation [106] known as the Blue Goose Mining Company, the defendant in this case. I am a stockholder of that company and one of its directors. I have been a director of the Blue Goose Mining Company since September, 1911. The Blue Goose Mining Company is engaged in the mining business in the Territory of Alaska.

Q. State to the Court, whether or not their business is exclusively in the Territory of Alaska.

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial and leading. They appeared and for that reason we claim it is entirely immaterial whether they ever did any business down there or not.

The COURT.—I rule the question out.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Mr. Bachelder is the defendant corporation engaged in any business in the State of California?

Mr. ORTON.—The same objection, irrelevant, incompetent and immaterial, and nothing whatever to do with this case as to whether or not they are engaged in business in the State of California.

The COURT.—I rule it out.

(Testimony of J. A. Bachelder.)

To which ruling of the Court the defendant duly excepted, and an exception was allowed.

Q. Were they engaged in any business in the State of [107] California, or did they have any officer in the State of California in the year 1911?

Mr. ORTON.—The same objection.

The COURT.—Rule it out.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—We offer to prove by this witness now upon the stand who has testified that he is and was a director of the corporation, that the corporation was not engaged in business in the State of California during the year 1911, and had no officer of any character in the State of California.

Mr. ORTON.—Objected to as being entirely irrelevant, incompetent and immaterial, and does not tend to impeach this record.

The COURT.—Rule it out.

To which ruling of the Court the defendant duly excepted, and an exception was allowed.

I am familiar with the by-laws of the Blue Goose Mining Company, and they provide for the election of general counsel by the board of directors. I know Albert Fink and Thos. R. White known as the firm of Fink & White, Lawyers of San Francisco, California.

Q. Did they represent, or have they authority to represent the Blue Goose Mining Company during the year 1911 or at all? [108]

Mr. ORTON.—That is objected to as immaterial

(Testimony of J. A. Bachelder.)

and not the proper way to prove authority; it is not always within the knowledge of a director of a company who is authorized to act as attorneys for the company; this is very improper and they cannot prove this in this way. It is not the business of a director to employ counsel, but the business of the chief executive officer of the corporation, and it is not for him to say whether the corporation employed them or not, that he can say is that he did not do so.

The COURT.—I rule the question out.

To which ruling of the Court the defendant duly excepted, and an exception was allowed.

About a year ago, maybe a little more, I first learned of an action in the Superior Court of the State of California in and for the City and County of San Francisco, entitled the Northern Light Mining Company, a corporation, plaintiff, vs. the Blue Goose Mining Company, a corporation, defendant, which action was begun on the 2d day of January, 1911, and went to judgment therein on the 22d day of March, 1912. I did not learn of this action until after and subsequent to the date of the judgment therein. I had no knowledge of such proceeding until they were determined. I have been at every meeting of the board of directors of the Blue Goose Mining Company since 1911, and the board of directors of the Blue Goose Mining Company have had no meeting regular or special since 1911 or during 1911, that I was not present at.

Q. Were the board of directors ever apprised of this action pending or brought in the Superior Court

(Testimony of J. A. Bachelder.)

of the State of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Ask him if the matter ever came up before the board of directors.

Q. Did the matter of this law suit ever come up before the [109] board of directors in any manner or form. Did the question of this action in the State Courts of California ever come up before the board of directors at any of their meetings since the inception of this *this* action and until long subsequent to the judgment therein? A. I did not.

Q. Mr. Bachelder, had the defendant corporation at any time in the year 1911, or since that date, or at all, any property within the State of California?

Mr. ORTON.—I object to that question as being irrelevant, incompetent and immaterial.

The COURT.—Rule the question out.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Cross-examination.

(By Mr. ORTON.)

I am a stockholder of the Blue Goose Mining Company, I own ten shares of stock. The total capital stock of said company is 500,000 shares, and I own ten shares. That is all the interest I have in the company is ten shares out of Five Hundred Thousand shares. I am assistant treasurer of the company, Mr. Stevenson is treasurer. Mr. Stevenson was elected secretary and treasurer of the company in 1911.

(Testimony of J. A. Bachelder.)

My business is that of the bank; I am also employed by the Pioneer Mining Company in the summer time. Mr. Jafet Lindeberg is president of the Pioneer Mining Company. I [110] think Mr. G. W. Campbell was secretary of the Blue Goose Mining Company prior to the 22d day of September, 1911.

Q. Was it not Thos. R. White.

A. I am not sure.

I was present at the meeting of the board of directors of the Blue Goose Mining Company on the 22d day of September, 1911, but I was not present at the stockholders meeting of that date.

Q. And there was nothing said about this case at that time? A. There was not.

Mr. Lindeberg was present at that meeting.

Q. Now you didn't have another meeting of the board of directors until October 21st, 1912, did you?

A. I don't think so.

Q. Now, you had a meeting September 22d, 1911, when did you have the next meeting of the board?

A. Well, I don't remember the date; it was in October, I should say, 1912.

Q. Did you have any meeting of the board of directors in between those times?

A. Not that I know of. I think Mr. Lomen was elected general counsel of the Blue Goose Mining Company in 1911, prior to this meeting in 1911. I had nothing to do with the company and did not know who was secretary prior to September 22d,

(Testimony of J. A. Bachelder.)

1911. I do not know who the officers were prior to that date. [111]

Q. (Examining minutes of the Blue Goose Mining Co.) Now I have got up to the meeting here of October 21st, 1912, adjourned meeting of the stockholders—were you present at that meeting? A. I was.

Mr. LOMEN.—That was subsequent to the judgment, your Honor.

The COURT.—You ought to put those dates down so you won't forget them,—when this suit was commenced and when it was ended, and then you won't get confused. I cannot keep it in my mind. Confine yourself in your examination from the time that suit was commenced until it ended.

Mr. ORTON.—This case was commenced June 2d, 1911, judgment was entered in the Superior Court March 22d, 1912. It went to the higher courts and didn't get back down and thereafter affirmed until October, 1914, and was pending during all that time, so that I say it was pending October 21st, 1912.

Mr. COCHRAN.—So it limits it down to the date *date* of the commencement of this action in June, 1911, until the entry of judgment by the trial Court in March, 1912. [112]

The COURT.—Confine yourself within those limits.

Q. Then from the time this case was commenced in 1911, in June until March, 1912, you never had but one meeting, did you? A. I think not.

I am now assistant treasurer of the company. I

(Testimony of J. A. Bachelder.)

don't think I was assistant treasurer during the period mentioned between June, 1911, and March, 1912—I think I was only a director in the company.

Q. Did you ever do any business for the company whatever except to go to that one director's meeting during that time?

A. Yes, I have done business for the company looking after their affairs, their shipments and one thing or another, in that way.

I did not do that as a director, I did not do anything as a director except to attend that one meeting during that period—I think I kept the books of the company during a part of that time—I did not keep the books as a director, simply as an employee I suppose, as an employee of the Pioneer Mining Company. The Pioneer Mining Company were keeping their books. I am keeping books for the Pioneer Mining Company.

The other directors of the Blue Goose Mining Company were Jafet Lindeberg, J. J. Cole, L. Stevenson, G. J. Lomen and myself as elected Sept. 27, 1911.

All that was done at the meeting of the directors in September 22d, 1911, was put on the minutes. At that time [113] the company was doing a comparatively large business.

Mr. ORTON.—I offer a copy of this page of the minute-book in evidence in connection with the examination of this witness, for the purpose of showing what was done at that meeting of the directors of September 27, 1911.

Said copy of said page of said minutes were received and read in evidence and marked Plaintiff's Exhibit No. 8 and are as follows:

Plaintiff's Exhibit No. 8—Excerpts from Minutes of Meeting of Board of Directors of Blue Goose M. Co., Sept. 27, 1911.

“#2616. In the District Court, Territory of Alaska,
Second Division.

N. L. Min. Co., Plaintiff, vs. B. G. Min. Co., Defendant.

Plt's Ex. 8. Def't Ex. Filed July 17, 1916. G. A. Adams, Clerk. By ———, Deputy.

MINUTES OF A MEETING OF A BOARD OF DIRECTORS OF THE BLUE GOOSE MINING COMPANY.

Nome, Alaska, September 27th, 1911. [114]

Immediately upon the adjournment of the stockholders' meeting heretofore held on the 27th day of September, 1911, the board of directors elected at said stockholders' meeting, met in the offices of the Pioneer Mining Company at Nome, Alaska.

There were present the following board, consisting of Jafet Lindeberg, J. J. Cole, L. Stevenson, G. J. Lomen and J. A. Bachelder;

Jafet Lindeberg placed in nomination for the office of president of the company for the ensuing year, was duly elected president.

J. J. Cole, being duly placed in nomination for the office of vice-president of said company, for the ensuing year, was unanimously elected vice-president.

L. Stevenson being placed in nomination for the office of secretary and treasurer for said company

(Testimony of J. A. Bachelder.)

for the ensuing year, was duly elected secretary and treasurer.

On motion G. J. Lomen was elected general counsel.

On motion meeting adjourned.

L. STEVENSON,
Secretary."

Q. That was the only meeting that was held from the time you were elected a director on September 22d, 1911, until the next meeting of the directors which was October 21st, 1912.

A. That was the only one.

Testimony of J. J. Cole, for Defendant.

J. J. COLE, a witness produced on behalf of the defendant [115] being duly sworn, testified as follows:

My name is J. J. Cole. I am a director and vice-president of the defendant corporation. I have been a director—I think, for six or seven years, I don't know from just what date I was a director—before June 2d, 1911, and have been a director since then and up to the present time. I have been vice-president of the company since 1909, or 1910. Mr. Lindenberg has been president of the company since and prior to June 2d, 1911. The business of the corporation is at Nome and in council in the Territory of Alaska.

Q. (By Mr. COCHRAN.) Has the company any business elsewhere?

Mr. ORTON.—Objected to as entirely immaterial, irrelevant and incompetent.

(Testimony of J. J. Cole.)

The COURT.—I rule it out.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Now, did the Blue Goose Mining Company, the defendant herein, have any business of any kind in the State of California prior or subsequent to the 2d day of June, 1911?

Mr. ORTON.—Objected to as entirely incompetent, irrelevant and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant then and there duly excepted and an exception was allowed. [116]

Q. Mr. Cole, on the 2d day of June, 1911, or prior or subsequent thereto, did the defendant corporation own any property or have any office within the State of California or elsewhere other than within the Territory of Alaska?

Mr. ORTON.—Objected to as entirely immaterial in this case and incompetent.

The COURT.—Objection sustained.

To which ruling of the Court the defendant then and there duly excepted and an exception was allowed.

Mr. COCHRAN.—We offer to prove by the witness now on the stand, shown to be the vice-president and a director of the defendant corporation during the time since the 2d day of June, 1911, that the defendant corporation did not, prior or subsequent to that date, have any property within the State of California, nor did it upon or prior or subsequent to

(Testimony of J. J. Cole.)

such date, have any office within, or performed any business within the State of California.

Mr. ORTON.—We object to the offer as being immaterial and incompetent. [117]

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

I have been present at all of the meetings of the board of directors since the 2d day of June, 1911. The meetings of the board of directors were held in the office of the Pioneer Mining Company, at Nome, Alaska.

Q. Did the directors of the Blue Goose Mining Company employ or authorize Messrs. Fink & White or either of them to appear as attorneys for them in any litigation in the State of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial, and not the proper way to prove want of authority.

The COURT.—Objection sustained.

To which ruling of the Court the defendant then and there duly excepted and an exception was allowed.

I know of an action brought in the Superior Court of the State of California in and for the City and County of San Francisco, entitled the Northern Light Mining Company vs. Blue Goose Mining Company. I first learned of that action being brought, either in the fall of 1912 or in the spring of 1913, I cannot place the date exactly. I had no knowledge

(Testimony of J. J. Cole.)

of such action being brought prior to the 22d day of March, 1912. The fact of such an action pending in the courts of [118] California was never brought up at any meeting before the board of directors at their meetings.

Cross-examination.

By Mr. ORTON.—I think it was in 1910 that I was first elected a director of the defendant corporation. I think Mr. Lindeberg was elected president in 1910. He has been president ever since I was elected vice-president.

Mr. ORTON.—I wish to offer that part of the minutes of the company in connection with the testimony of this witness.

A copy of said portion of said minutes were received and read in evidence and marked Plaintiff's Exhibit No. 9, and is as follows:

Plaintiff's Exhibit No. 9—Excerpts from Minutes of Meeting of Board of Directors of Blue Goose M. Co., September 23, 1910.

“#2616 In the District Court, Territory of Alaska,
Second Division.

N. L. Min. Co., Plaintiff, vs. B. G. Min. Co., Defendant.

Plt's Ex 9. Def's Ex. Filed July 17, 1916. G. A. Adams, Clerk. By ———, Deputy.

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF THE BLUE GOOSE MINING CO. [119]

Nome, Alaska, September 23d, 1910.

Mr. Lindeberg was nominated by Mr. Campbell to

(Testimony of J. J. Cole.)

hold the office of president of the company for the ensuing year. There being no further nominations, on motion duly made and unanimously carried, Mr. Jafet Lindeberg was elected president of the Blue Goose Mining Company for the ensuing year, to have all of the powers of such office and such other powers as have heretofore by the board of directors of said company been given him.

THOS. R. WHITE,
Secretary."

I think Mr. Campbell was elected treasurer at that time, and held office until the next meeting. I have in the neighborhood of twenty thousand shares of stock in the company which I hold as trustee for the Miners & Merchants Bank. I have no shares personally. I have no personal interest in the company. I have an interest in the trust so far as being a stockholder in the Miners & Merchants Bank is concerned.

The matter of this suit was never brought up at any time before the directors at their meetings. I knew about it in the fall of 1912 and went to the meetings of the stockholders each meeting and did not say anything about this suit.

Q. Now, you really only had one meeting after the time this suit was commenced until judgment was entered in the Superior Court—you was at that meeting? [120]

A. I was at all the directors meeting that were held.

I was present at the meeting where Mr. Lomen was elected general counsel. All that occurred at

(Testimony of J. J. Cole.)

that meeting was upon that page of the minutes. The officers of the company elected in 1910, held over until the next meeting in 1911, in September.

Q. Mr. Campbell was elected treasurer and Thos. R. White of the firm of Fink & White, the secretary?

A. I could not say.

Mr. COCHRAN.—It is admitted that Thos. R. White was elected secretary on the 23d day of September, 1910, for the ensuing year, and that Mr. G. W. Campbell was elected treasurer at such meeting for the ensuing year.

Mr. COCHRAN.—If the Court pleases, we now offer in evidence the Articles of Incorporation of the Blue Goose Mining Company.

Said Articles of Incorporation being received in evidence and marked Defendant's Exhibit "A," and are as follows:

**Defendant's Exhibit "A"—Articles of Incorporation
of Blue Goose M. Co.**

**ARTICLES OF INCORPORATION OF BLUE
GOOSE MINING COMPANY.**

KNOW ALL MEN BY THESE PRESENTS:
That we, the undersigned, adult persons and *bona*
[121] *fide* residents of the District of Alaska, desiring to avail ourselves of Section 5, of an act of Congress of March 2, 1903, entitled "An Act Amending the Civil Code of Alaska, providing for the organization of private corporations and for other purposes," have and by these presents do, under the conditions and subject to the limitations hereinafter ex-

pressed, organized the Blue Goose Mining Company, a corporation, as follows, to wit:

ARTICLE I.

1.

The name of the corporation is Blue Goose Mining Company.

2.

The nature and character of the business of said corporation shall be as follows, to wit:

First. To construct, own and operate railroads, tramways, street railways, wagon roads, canals, flumes and telegraph and telephone lines in Alaska.

Second. To acquire, hold and operate mines in Alaska.

Third. To carry on the fishery industry in all its branches in Alaska, and in the waters contiguous and adjacent thereto.

Fourth. To construct and operate smelters, electric and other power and lighting plants, docks, wharves, elevators, warehouses and hotels in Alaska.
[122]

Fifth. To carry on trade, transportation, agriculture, limbering, and manufacturing in Alaska.

Sixth. Also to build, own, operate, dig and construct ditches, canals, flumes, pip-lines, dams and reservoirs, for public and private use, and in that connection to make, fix and collect rates for the use of said ditches, flumes, pipe-lines, canals, dams, and reservoirs, and the water therein flowing, or therein held or contained.

Seventh. To borrow and loan money, and in that connection to pledge, mortgage and hypothecate the

name, stock, assets, real and personal property of said corporation.

Eighth. To buy, sell pledge, mortgage, hypothecate, and exchange all and singular each and every kind of real and personal property in the District of Alaska, and elsewhere.

Ninth. To build, construct and operate saw-mills, and machine-shops.

Tenth. To do all and singular each and every act and thing necessary or requisite to the full use and enjoyment of the privileges, matters and things hereinbefore set forth.

3.

The principal place of transacting the business of said corporation shall be at Nome, Alaska. [123]

ARTICLE II.

1.

The date of the commencement of said corporation shall be the 23d day of August, A. D, 1904, and the period of continuance of said corporation shall be fifty (50) years.

ARTICLE III.

1.

The amount of the capital stock of said corporation shall be Five Hundred Thousand (500,000) Dollars.

2.

The capital stock of said corporation shall be paid in money, labor, or property, estimated at its true money value.

3.

The number of shares of the capital stock of said

corporation, shall be Five Hundred Thousand (500,00) shares, of the par value of One (1) Dollar, each.

4.

No stock shall be issued by said corporation until the same shall have been fully paid for, which fact shall appear on the certificates of stock, but this shall not preclude the corporation from disposing of its Treasury Stock, for a less sum than its par value.
[124]

5.

The corporation shall under no circumstances levy or collect any assessment on its outstanding stock, and each certificate of stock, shall have printed thereon the words "Nonassessable."

ARTICLE IV.

1.

The highest amount of indebtedness to which said corporation shall at any time be subject, shall be Five Hundred Thousand (500,00) Dollars.

ARTICLE V.

1.

THE names and places of residence of the persons forming said corporation are as follows, to wit:

NAMES.	RESIDENCE.
Leo Loewenherz	Nome, Alaska.
A. J. Daley	" "
Albert Fink	" "
E. W. Renniger	" "
Harry S. Moore	" "

ARTICLE VI.

1.

The names of the first board of directors of [125]
said corporation shall be as follows:

LEO LOWENHERZ.

A. J. DALEY.

ALBERT FINK.

E. W. RENNIGER.

HARRY S. MOORE.

2.

The government of the corporation and the management of its affairs shall be vested in a board of directors, composed of five persons who shall be stockholders in said corporation, and who shall be elected at an annual stockholders' meeting to be held on the first Monday in August, of each year, and whose term of office shall be for one year thereafter, and until their successors are elected and qualified.

ARTICLE VII.

1.

The Articles of Incorporation of said corporation may be amended when authorized by a vote of a majority of the stock, given at any regular meeting of the stockholders, such amended articles shall be executed and acknowledged by the board of directors, or a majority of them, and shall be filed and recorded in the same places and manner as the original articles. [126]

ARTICLE VIII.

1.

The first meeting of the board of directors, shall be held in Nome, Alaska, as soon as convenient after

the filing of the foregoing Articles of Incorporation, and shall be called by a notice signed by one of the Directors named in the Articles of Incorporation, which said notice shall state the time, and place of meeting, and shall be served on each of the directors named in said Articles of Incorporation.

All other meetings of the board of directors shall be as provided for in the By-laws.

ARTICLE IX.

1.

Each of the undersigned incorporators hereby subscribe to ten shares each, of the Capital stock of said corporation.

IN WITNESS WHEREOF, we, the undersigned, incorporators, have hereunto set our hands this 23d day of August, 1904.

LEO LOEWENHERZ.

A. J. DALEY.

ALBERT FINK.

E. W. RINNIGER.

HARRY S. MOORE.

United States of America, [127]

District of Alaska,—ss.

This is to certify, that on this 23d day of August, A. D. 1904, before me, the undersigned, a notary public, in and for the District of Alaska, personally appeared Leo Loewenherz, A. J. Daley, Albert Fink, E. W. Rinniger and Harry S. Moore, each of whom acknowledged to me that he is an adult person and a *bona fide* resident of the District of Alaska, and that he executed the foregoing Articles of Incorporation for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[Notarial Seal] JEREMIAH COUSBY,
Notary Public in and for the District of Alaska,
Residing at Nome.

[Endorsed on Back]: #172. Articles of Incorporation of the Blue Goose Mining Company. Filed in the Office of the Clerk of the U. S. Dist. Court, Alaska, Second Division, at Nome, Alaska. Aug. 23, 1904. Geo. V. Borchsenius, Clerk. By Jno. H. Dunn, Deputy Clerk. Record of Articles #1, Page 24. 18.2. 270 Filing 10—\$2.80.

[Endorsed]: #2616. In the District Court, Territory of Alaska, [128] Second Division. N. L. Min. Co., Plaintiff, vs. B. G. Min. Co., Defendant. Plt's Ex., Deft's Ex. "A." Filed July 17, 1916. G. A. Adams, Clerk. By ————, Deputy.

Mr. COCHRAN.—We next offer in evidence the By-Laws of the Blue Goose Mining Company.

Mr. ORTON.—We object to the offer as being entirely incompetent, for any purpose.

The COURT.—I do not think that they are admissible in this proceeding.

To which ruling of the Court the defendant then and there duly excepted, and an exception was allowed.

Mr. COCHRAN.—Then I will have to read them into the record. I offer to prove—

Mr. GRIGSBY.—Have the offer in writing, then.

Mr. COCHRAN.—I offer in evidence the minute-book of the Blue Goose Mining Company. I cannot

make a proper offer until we get the secretary or unless these gentlemen will waive this technical objection.

Mr. ORTON.—For the purpose of you making that offer, I will admit that that is the [129] original and genuine minute-book of the corporation. I have already used it myself. I admit that the By-Laws of the corporation are written there on pages 3, 4, 5, 6, 7, 8, and 9 and concluded on page 10, and certified to by the secretary on page 11. I will also admit that the minute-book shows they were regularly adopted, but I object to the evidence as being entirely incompetent. I object to having them read. It is a document and can be marked and identified, and don't need to be read. I am willing to substitute a copy afterwards, you can have the original marked and substitute a copy.

Said minutes were received by the clerk and marked Exhibit "B" for identification, and are as follows:

Defendant's Exhibit "B" for Identification—By-laws of the Blue Goose M. Co.

BY-LAWS OF THE BLUE GOOSE MINING COMPANY.

ARTICLE I.

Seal and Place of Business.

Section 1. The corporate seal of this corporation until such time as a proper seal can be secured, shall be as follows:

Section 2. Until changed by the directors, the general office of this corporation shall be at the law offices of Albert Fink, in Nome, Alaska, but the di-

rectors may at any regular or special meeting change the place of such office. [130]

ARTICLE II.

Capital Stock.

Section 1. All certificates of stock shall be signed by the president and secretary of this corporation, and sealed with the corporate seal.

Section 2. The directors may provide for the registration of all stock by some bank or trust company.

Section 3. Shares of capital stock may be transferred on indorsement of the certificate, and its surrender to the secretary for cancellation, whereupon the stock shall be transferred upon the books of the corporation, and the transferee shall be entitled to have a new certificate issued to him. The board of directors may by resolution forbid the transfer of stock on the books of the corporation for a space of time, not exceeding thirty days, immediately before a meeting of the stockholders, or immediately before the payment of a dividend.

Section 4. In case of loss or destruction of a certificate of the capital stock, the owner shall not be entitled to receive a new certificate in lieu thereof until a lapse of sixty days, after written notice of such loss or destruction has been served on the secretary, and then only on making satisfactory proof of such loss or destruction, and on giving the corporation ample indemnity, by bond or otherwise, as the directors may prescribe. Any new certificate issued under such circumstances shall have plainly marked "Duplicate," on the face thereof.

Section 5. In case of the death of a stockholder a new certificate may be issued to his personal representative [131] on surrender of the old certificate, and on filing with the secretary a duly certified copy of the letters testamentary or of administration.

ARTICLE III.

Stockholders' Meetings.

Section 1. The regular annual meeting of the stockholders of this corporation shall be held at the general offices of the corporation on the first Monday in August, of each year, at the hour of 2 o'clock P. M., and said meeting may be adjourned from day to day, until its business is completed.

Section 2. Special meeting of the stockholders may be called by a majority of the directors at such times and places as may be selected; and the directors shall call a meeting of the stockholders after a written request so to do signed by the owners of a majority of the outstanding stock of the corporation. Such special meetings shall be called at the same place and the same hour, as the regular annual meetings.

Section 3. Whenever a special meeting of the stockholders is called, the secretary shall mail to each of the stockholders, at his last known address, a written or printed notice of the time and place of holding such special meeting; said notice shall be mailed at least thirty days before the day of the meeting.

Section 4. At all meetings of the stockholders each stockholder shall be entitled to cast one vote for each [132] share of stock held by him, and such votes may be cast in person or by proxy. All prox-

ies shall be in writing, signed by the stockholder, and acknowledged like a conveyance of land.

Section 5. At any stockholders' meeting a majority of the stock issued must be represented in order to constitute a quorum for the transaction of business; but the stockholders present at any meeting, though less than a quorum, may adjourn the meeting to some other day.

Section 6. The president and secretary of the corporation shall act as the president and secretary, respectively, at each stockholders' meeting, and the directors of the corporation, or a committee appointed by them from their own number, shall pass on the authenticity of proxies.

ARTICLE IV.

Directors.

Section 1. The affairs of this corporation shall be managed by a board of five directors, who shall be stockholders, and who shall be elected by the stockholders at the regular annual meeting, and who shall hold office for one year, and until their successors are elected and qualified.

Section 2. The directors shall elect all the other officers of the corporation. Such election shall be held annually, as soon as possible after the annual stockholders' meeting. All the officers of the corporation shall hold office during the pleasure of the board of directors, [133] but no officer once regularly elected by the board of directors shall be removed from office except by a full board.

Section 3. Vacancies in the offices of the corporation or in the board of directors may be filled by

election by the remaining members of the board of directors, at any regular or special meeting of the board.

Section 4. A transfer by a director of all his stock in the corporation shall operate as a resignation of his office.

Section 5. Directors shall not receive any salary or compensation for their services as directors, but a director who is also an officer of the corporation may, by resolution of the board, receive compensation for his services as such officer.

Section 6. Regular meetings of the board of directors shall be held annually after the adjournment of each regular annual meeting of the stockholders.

Section 7. Special meetings of the board of directors may be called at any time by the president, or by any two directors, by personal notice to each director, who may be found in Nome, Alaska.

Section 8. At any regular or special meeting of the board of directors, a majority of the directors shall constitute a quorum for the transaction of business, but a similar number may adjourn the meeting to some other day. [134]

ARTICLE V.

Officers.

Section 1. The officers of this corporation shall be a president, vice-president, secretary, treasurer, and general counsel. They shall be elected by the directors as soon as practicable after each election of directors, and shall hold office during the pleasure

of the board, and until their successors are elected and qualified.

Section 2. Only directors shall be eligible to the offices of president and vice-president. A president or vice-president who ceases to be a director shall cease to hold office as president or vice-president as soon as his successor is elected. Any and all of the offices of said corporation may be held by the same person at the same time, with the exceptions of the offices of president and vice-president.

Section 3. The president shall be the general executive officer of the corporation. He shall preside at all meetings of the directors and stockholders, shall prepare and present at each annual stockholders' meeting a report of the business of the corporation for the preceding year, and a statement of its present condition, shall sign all stock certificates and written contracts of the corporation, and perform generally all the duties usually appertaining to the offices of president of a corporation. He shall have general charge (subject to the control of the Board of Directors) of the business affairs of the corporation, may [135] sign and indorse bonds, bills, checks and promissory notes on behalf of the corporation, and may borrow money in its name; but he shall have no power without the previous consent of the board of directors to incur any debt on behalf of the corporation in excess of the sum of Five Hundred Dollars, or without such consent to bind the corporation by any obligation involving a liability in excess of said sum. He shall at all times keep the

directors advised as to the affairs of the corporation.

Section 4. The vice-president shall preside at any meetings of the stockholders and of the directors from which the president may be absent, and he may perform any of the other duties of the president, during the absence of the latter, whenever directed to do so by vote of the board of directors.

Section 5. The secretary shall keep the minutes of all stockholders' and directors' meetings, shall keep the stock register and stock transfer book, and shall be the custodian of the corporate seal, and of all records, papers, files and books of the corporation. He shall affix the corporate seal to all documents to which it should be attached, and attest the same by his signature, and shall perform generally all the duties usually appertaining to the office of secretary of a corporation.

Section 6. The treasurer shall have custody of all the money and funds of the corporation, shall keep all the money and funds of the corporation, shall keep its books [136] of account, and shall countersign all checks of the corporation. He shall deposit the funds of the corporation in some bank or banks to be selected by him with the approval of the Board of Directors, in the name of the corporation. Whenever requested to do so, he shall give bond to the corporation in any amount to be fixed by the board of directors, and with sureties to be approved by them. He shall at all times keep the directors fully informed as to the financial condition of the corporation, and he shall prepare and present at each annual stockholders' meeting a report showing the receipts

and disbursements of the preceding year, and the present financial condition of the corporation. He shall be the general financial officer of the corporation, and he shall prepare and present at each annual taining to the office of treasurer of a corporation.

Section 7. The general counsel shall be the legal adviser of the corporation, and shall perform such services and receive such compensation as may be determined by the board of directors.

ARTICLE VI.

Amendments.

Section 1. These by-laws or any of them, may be altered, amended, added to, or repealed at any regular or special meeting of a full board of directors.

BE IT RESOLVED by the board of directors of the Blue Goose Mining Company, that the foregoing by-laws shall [137] be and are hereby adopted, as the By-laws of the Blue Goose Mining Company.

In Witness Whereof, we, the undersigned, directors and owners of all outstanding stock of said corporation, have hereunto set our hands this —— day of August, A. D. 1904.

[Endorsed]: #172. N. L. M. Co., vs. B. G. M. Co.
Deft's Ex. B. for Identification. July 17, 1916. G.
A. Adams, Clerk, Dis. Court.

Testimony of G. J. Lomen, for Defendant.

G. J. LOMEN, a witness produced on behalf of the defendant, testified as follows:

My name is G. J. Lomen. I am an attorney at law duly admitted to practice law in the courts of the Territory of Alaska. I am one of the attorneys for the defendant in this action. I hold the office of general counsel of the [138] defendant Blue Goose Mining Company, and am also a director of the company. I have been a director since 1909 or 1910. Since I became a director I have attended every meeting of the board of directors.

I know Thos. R. White; he was a member of the board of directors of the defendant company either in 1909 or 1910; I now know of the case of the Northern Light Mining Company, plaintiff, vs. Blue Goose Mining Company, defendant, instituted in the Superior Court of the State of California in and for the City and County of San Francisco. I first learned of such a case in the summer of 1912, after the opening of navigation. I did not know anything about the pendency of that case between the 2d day of June, 1911, and the 22d day of March, 1912. I did not know of any such action pending until after the judgment was entered. The matter of that case pending was never presented to the board of directors during the period between the 2d day of June, 1911, and the date of the entry of judgment on the 22d day of March, 1912.

I know Messrs. Fink & White, the attorneys whose names are signed to the answer in that case in the

(Testimony of G. J. Lomen.)

Superior Court of California, in and for the City and County of San Francisco. I know them personally.

Q. Were they at that time, that is at any time before or between the 2d day of June, 1911, and the 22d day of March, 1912, attorneys or representatives of the Blue Goose Mining Company?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial, and not within [139] the presumed knowledge of the witness and calling for a conclusion.

The COURT.—This is a suit against a corporation so there can be no doubt about it. If it was a suit against the witness himself, for instance, as to him employment as counsel in the suit, it would be properly admissible, on the ground that while the record is *prima facie* evidence of the employment it may be rebutted. There is no doubt about that being the law. This is a corporation, however, and the witness can only testify what there is within his personal knowledge as to the employment of counsel by the corporation, so the Court will ask the witness whether or not it is within your personal knowledge that the corporation did or did not employ counsel in the California suit?

The WITNESS.—Well, I cannot answer that by yes or no, your Honor, for the reason—

The COURT.—(Interrupting.) You will have to answer it yes or no.

The WITNESS.—I can say that I have personal knowledge of the meetings of the board of directors

(Testimony of G. J. Lomen.)

and to that extent could testify, but to answer generally it wouldn't be right for me to do that.

The COURT.—Well, we will have to rule the [140] question out then.

To which ruling of the Court the defendant then and there duly excepted, and an exception was allowed.

Q. (By Mr. COCHRAN.)—I will put it in a different form. Since you have been a member of the board of directors, did the board of directors authorize the employment at any time of Messrs. Fink and White, or other counsel, to represent the defendant, or appear for the defendant in the case in question?

Mr. ORTON.—That is objected to as irrelevant, incompetent and immaterial and calling for the conclusion of the witness.

The COURT.—I rule the question out.

To which ruling of the Court the defendant then and there duly excepted, and an exception was allowed.

Q. Did the board of directors meeting as a board of directors, at any meeting authorize the employment of Messrs. Fink and White or other counsel, to represent or appear for the corporation in the action in question in the State Courts of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial, the minutes themselves read in court are the best evidence on that.

The COURT.—I will have to rule the question out. I think the minutes speak for themselves.

(Testimony of G. J. Lomen.)

Q. Now state whether or not the defendant corporation has [141] since you have been a director of that corporation up to the 22d day of March, the date of the entry of this judgment, owned any property within the State of California.

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted, and an exception was allowed.

Q. Since you have been a director of the corporation, state if you know, whether or not the defendant corporation has, or did it do any business within the State of California prior to the 22d day of March, 1912?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant corporation authorize Messrs. Fink & White to appear or represent the defendant in the action in the State courts of California so far as you know as a director of the corporation.

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—He has already stated he didn't know whether they had authority or not within his personal knowledge; objection sustained. [142]

(Testimony of G. J. Lomen.)

The WITNESS.—I think your Honor misunderstood my answer.

The COURT.—How was that?

The WITNESS.—I don't think I ever answered the way your Honor puts it now. I have some knowledge.

The COURT.—You stated you had no personal knowledge.

The WITNESS.—I have some knowledge, but I haven't all the knowledge.

I have been a director and general counsel during this entire period of which I speak—I have attended every meeting of the board of directors during the period.

Mr. COCHRAN.—I will repeat the question. Did the corporation authorize Messrs. Fink and White, to your knowledge, to appear or represent the defendant corporation in this action in the State Courts of California?

Mr. ORTON.—That is objected to—the corporation can only act through its officers.

The COURT.—I sustain the objection.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the board of directors at any time within your knowledge, authorize Messrs. Fink and White or other counsel to represent the defendant or appear for them in the [143] action in question in the State Courts of California?

Mr. ORTON.—Objected to, the minutes of the

(Testimony of G. J. Lomen.)

board being read in court is the best evidence.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—I offer to prove by the witness now on the stand that he has knowledge of all the acts of the board of directors since the year 1909; that the board of directors at no time authorized the appearance of Fink and White for the defendant in the action in question in the State Courts of California, or to represent the defendant in such action.

Mr. ORTON.—Objected to, as it appears that the minutes of the corporation are read in court and that they are the best evidence.

The COURT.—Objection sustained.

To which ruling of the Court the defendant excepted and an exception was allowed.

I was elected as general counsel for the Blue Goose Mining Company, September 22d, 1911. This was the first employment I had with the company.

Q. Just state what your duties were as counsel for the corporation with relation to litigation of the corporation.

Mr. ORTON.—Objected to as not competent evidence. [144]

The COURT.—Objection sustained.

To which ruling of the Court defendant excepted and an exception was allowed.

Q. State whether or not there was during the year 1911 or 1912, any agent or representative of the defendant resident of the State of California who had

(Testimony of G. J. Lomen.)

authority from the board of directors to accept service of process in the State of California issuing from the courts of that State, or who had authority from the board of directors to appear, represent or defend any actions brought against the defendant in the courts of said State of California, or who had authority from the board of directors of the corporation to employ any one to appear, represent or defend actions brought against the defendant within the State of California in the State Courts of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Cross-examination.

(By Mr. ORTON.)—I did not learn of this judgment until after the date upon which the judgment had been entered in California. I was elected general counsel for the defendant on September 22, 1911.

[145] Mr. Fink had been general counsel at one time a number of years before, that was the same Albert Fink who appeared as attorney for the company down in California in this case.

I was a director of the defendant prior to the time I was elected general counsel. The board of directors, prior to September, 1911, were Jafet Lindeberg, J. J. Cole, Thomas R. White, and G. W. Campbell and myself. We were elected on the 23d day

(Testimony of G. J. Lomen.)

of September, 1910, and served for the ensuing year. Thomas R. White is the same man that appeared as attorney for the defendant in this case in the courts of California, in and for the City and County of San Francisco.

Redirect Examination.

By Mr. COCHRAN.—(Witness Continuing.) Mr. G. W. Campbell was elected the treasurer of the company at a meeting of the board of directors on September 23d, 1910, and Mr. Thos. R. White was elected secretary. These two offices were divided at that time, but are united now.

Mr. White left Alaska in the fall of 1910 to remain away; he sold his house and closed his business and left with his family. Mr. Campbell left Alaska early in the summer of 1910; he was ill at the time. During that period Mr. White was not counsel or authorized counsel for the defendant.

Recross-examination.

(By Mr. ORTON.)

Q. That is, so far as you know? [146]

A. I am always speaking of my own knowledge at any time. I had not at that time been elected general counsel, but was a director. I think there was an adjourned meeting of the board of directors prior to the meeting of September 27th, but I don't know whether there was or not.

Q. You were not an executive officer of the company?

A. Well, I am an officer under the By-laws. I

(Testimony of G. J. Lomen.)

was only a director at that time.

Q. During that time Mr. White was secretary and you didn't have any meeting from the time you were elected until the next annual meeting, did you?

A. No, sir. I had never been in California prior to that time. My recollection is that Mr. White went out in the fall of 1910. I think Mr. Campbell was elected in 1910 and went out the following winter and returned again in the summer of 1911. He went out again in 1911, but did not return the following year. Mr. Campbell was treasurer of the Pioneer Mining Company here. I do not know whether or not he is still treasurer of the company. Mr. Campbell's home is in San Jose, California. I know he has an office in San Francisco from time to time.

Testimony of L. Stevenson, for Defendant.

Mr. L. STEVENSON, a witness produced on behalf of the defendant, testified as follows:

My name is Louis Stevenson. I reside in Nome and [147] have resided there for fifteen years. I am secretary and treasurer of the Blue Goose Mining Company and have the custody of its books and minutes. I am a member of the board of directors and have been a member of the board I think since 1911; the minutes will show whether I am right or not. I am a stockholder of the corporation and own ten shares of stock which belong to me.

Q. I will show you this book and ask you to state whether or not this is the original minutes of the meeting of the stockholders of the Blue Goose Mining Company of August 1st, 1910, in your custody?

(Testimony of L. Stevenson.)

A. It was in the book when I got it, so it must be.

Mr. COCHRAN.—I offer for evidence the minutes of the meeting of 1910 of the stockholders.

Mr. ORTON.—No objection. I have no objection to their substituting copies.

Said minutes were received in evidence and marked Defendant's Exhibit "C" and are as follows:

**Defendant's Exhibit "C"—Minutes of Meeting of
Stockholders of Blue Goose M. Co., August 1,
1910.**

**"MINUTES OF A MEETING OF THE STOCK-
HOLDERS OF THE BLUE GOOSE MIN-
ING COMPANY.**

Nome, Alaska, August 1st, 1910.

The stockholders of the Blue Goose Mining Company met on the 1st day of August, 1910, at the offices of the said company in the Nome Bank & Trust Company building in Nome, Alaska, the said date being the date for the regular annual meeting of the said stockholders. [148]

There were present at said meeting:

Jafet Lindeberg owning 156,656 shares of stock;

Albert Fink owning 12,500 shares of stock;

Thos. R. White owning 5 shares of stock.

And thereupon, upon motion duly made and unanimously carried, the said meeting was adjourned until 8 o'clock P. M., August 2d, 1910, and from day to day thereafter until 8:30 o'clock P. M. Sept. 23d, 1910.

THOS. R. WHITE,
Secretary."

Mr. COCHRAN.—We next offer in evidence from the original minute-book of the defendant, the minutes of the meeting of the stockholders held on September 23d, 1910.

Mr. ORTON.—No objection.

Said minutes being received in evidence and marked Defendant's Exhibit "D," and are as follows:

Defendant's Exhibit "D"—Minutes of Meeting of Stockholders of Blue Goose M. Co., September 23, 1910.

"MINUTES OF A MEETING OF THE STOCKHOLDERS OF THE BLUE GOOSE MINING COMPANY.

Nome, Alaska, September 23d, 1910.

A meeting of the stockholders of the Blue Goose Mining Company was held in the offices of Albert Fink, Esq., in Nome, Alaska, at 8:30 o'clock P. M., Sept. 23d, 1910, pursuant to the last adjournment.

Upon a roll-call being had, the following named persons, stockholders in said company, and owning the number of shares of stock set opposite their respective names, were [149] found to be present, to wit:

Jafet Lindeberg, 156,656 shares;

Albert Fink, 12,500 shares;

G. J. Lomen, 10 shares;

Guy W. Campbell, 10 shares;

Thos. R. White, 5 shares;

J. J. Cole, 18,750 $\frac{2}{3}$ shares.

Upon motion duly made, seconded and unani-

mously carried, the election of a board of directors for the ensuing year was declared to be the first order of business, it appearing that a majority of the shares of stock outstanding were represented.

Whereupon, Albert Fink tendered his resignation as vice-president and director of the company, which was, upon motion duly made and carried, accepted.

Thereupon, upon motion duly made, seconded and unanimously carried, a board of directors consisting of the following, to wit, Jafet Lindeberg, Guy W. Campbell, G. J. Lomen, J. J. Cole and Thos. R. White, was elected for the ensuing year:

Whereupon, the said directors took and subscribed the following oath:

United States of America,
District of Alaska,—ss.

Jafet Lindeberg, J. J. Cole, Guy W. Campbell, G. J. Lomen and Thos. R. White, being each duly sworn, deposes and says: each for himself and not one for the other; [150] that he is one of the persons elected a director at the regular annual meeting of the stockholders of the Blue Goose Mining Company, and that he will well and faithfully perform the duties of director of said company and of such office as he may be elected to therein.

JAFET LINDEBERG.

J. J. COLE.

G. J. LOMEN.

THOS. R. WHITE.

G. W. CAMPBELL.

Subscribed in my presence and sworn to before me this 23d day of September, 1910.

O. D. COCHRAN,

Notary Public in and for the District of Alaska.

Whereupon, there being no further business to come before the meeting, it was on motion duly made, seconded and carried, adjourned.

[Notarial Seal]

THOS. R. WHITE,
Secretary."

Mr. COCHRAN.—I next offer in evidence minutes of the meeting of the board of directors of the Blue Goose Mining Company of September 23d, 1910.

Said minutes being received in evidence and marked Defendant's Exhibit "E," and are as follows: [151]

Defendant's Exhibit "E"—Minutes of Meeting of Board of Directors of Blue Goose M. Co., September 23, 1910.

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF THE BLUE GOOSE MINING CO.

Nome, Alaska, September 23d, 1910.

Immediately upon the adjournment of the stockholders' meeting heretofore held on the 23d day of September, 1910, the board of directors elected at said stockholders' meeting met in the offices of Albert Fink, Esq., Nome, Alaska.

There were present a full board consisting of, Jafet Lindeberg, J. J. Cole, Guy W. Campbell, G. J. Lomen, Thos. R. White, and the following proceedings were had:

Mr. Lindeberg was nominated by Mr. Campbell to hold the office of president of the company for the ensuing year. There being no further nominations, on motion duly made and unanimously carried, Mr. Jafet Lindeberg was elected president of the Blue Goose Mining Company for the ensuing year, to have all of the powers of such officer and such other powers as have heretofore by the board of directors of said company been given him.

Mr. White was nominated by Mr. Lomen to hold the office of secretary of the company for the ensuing year. There being no further nominations, on motion duly made, seconded and unanimously carried, Mr. Thos. R. White was elected secretary of the Blue Goose Mining Company for the ensuing year.

Mr. Campbell was nominated by Mr. White for the [152] office of treasurer of the company for the ensuing year. There being no further nominations, on motion duly made, seconded and carried, Mr. Guy W. Campbell was elected treasurer of the Blue Goose Mining Company for the ensuing year.

On motion duly made, seconded and unanimously carried the Miners & Merchants Bank of Alaska was made the depositary of the funds of the company.

WHEREUPON, there being no further business to come before the meeting, it was on motion duly made and carried, adjourned.

THOS. R. WHITE,
Secretary."

Mr. COCHRAN.—I next offer in evidence the minutes of the meeting of the stockholders of the Blue Goose Mining Company of August 7th, 1911.

Said minutes being received in evidence and marked Defendant's Exhibit "F," and are as follows:

Defendant's Exhibit "F"—Minutes of Meeting of Stockholders of Blue Goose M. Co., March 7, 1911.

"MINUTES OF A MEETING OF THE STOCKHOLDERS OF THE BLUE GOOSE MINING COMPANY.

Nome, Alaska, August 7th, 1911.

The stockholders of the Blue Goose Mining Company met on the 7th day of August, 1911, at two o'clock of that day, at the office of G. J. Lomen in Nome, Alaska, the said date being the date of the regular annual meeting of said [153] stockholders:

There was present at said meeting:

Jafet Lindeberg owning 156,656 shares of stock;

G. J. Lomen owning 10 shares of stock;

J. J. Cole owning 18,750 $\frac{2}{3}$ shares of stock.

And thereupon, upon motion duly made and carried, the said meeting was adjourned until the 8th day of August, 1911, at four o'clock P. M., and from day to day thereafter until September 27th, 1911, at four o'clock P. M. at the office of the Pioneer Mining Company in Nome, Alaska.

G. J. LOMEN,

Acting Secretary."

Mr. COCHRAN.—I next offer in evidence the minutes of the meeting of the stockholders of the Blue Goose Mining Company of September 27th, 1911.

Said minutes being received in evidence and marked Defendant's Exhibit "G," and are as follows:

Defendant's Exhibit "G"—Minutes of Meeting of Stockholders of Blue Goose M. Co., September 27, 1911.

"MINUTES OF A MEETING OF THE STOCKHOLDERS OF THE BLUE GOOSE MINING COMPANY.

Nome, Alaska, September 27th, 1911.

A meeting of the stockholders of the Blue Goose Mining Company was held at the offices of the Pioneer Mining Company, in Nome, Alaska, at four o'clock P. M., September 27th, 1911, pursuant to adjourned meeting. [154]

In the absence of, and on account of the removal of Thos. R. White, Secretary, G. J. Lomen was elected secretary pro tem.

Upon roll-call being had, the following named persons, stockholders in said company and owning the number of shares of stock set opposite their respective names, were found to be present, to wit:

Jafet Lindeberg owning 156,656 shares;

G. J. Lomen owning 10 shares;

J. J. Cole owning 18,750 $\frac{2}{3}$ shares.

On motion duly made, seconded and unanimously carried, an election of the board of directors for the ensuing year was declared to be the first order of business.

Upon motion, the following board of directors was elected for the ensuing year :

J. J. COLE.

JAFET LINDEBERG.

S. STEVENSON.

G. J. LOMEN and

J. A. BACHELDER.

Whereupon the said directors took and subscribed the following oath :

District of Alaska,

Nome Precinct,—ss.

Jafet Lindeberg, J. J. Cole and L. Stevenson and J. A. Bachelder being each duly sworn deposes and says: each for himself and not one for the other, that he is one of the persons elected a director at the regular [155] annual meeting of the stockholders of the Blue Goose Mining Company, and that he will well and faithfully perform the duties of director of said company, and of such office as he may be elected to therein.

J. J. COLE.

JAFET LINDEBERG.

L. STEVENSON.

J. A. BACHELDER.

Subscribed and sworn to before me this 27th day of Sept., 1911.

G. J. LOMEN,

Notary Public, District of Alaska.

DIRECTOR'S OATH.

District of Alaska,
Nome Precinct,—ss.

G. J. Lomen being duly sworn, deposes and says: That he is one of the persons elected a director of the Blue Goose Mining Company, at the regular annual meeting of the stockholders of said company, September 27th, 1911; and that he will well and faithfully perform the duties of director of said company and of such office in said company as he may be elected to therein.

G. J. LOMEN.

Subscribed and sworn to before me this the 27th day of September, 1911.

O. D. COCHRAN, [156]

Notary Public in and for the District of Alaska.

On motion of Jafet Lindeberg, it was unanimously resolved that Section 5 of the By-laws be, and the same was amended so as to read as follows:

“Directors present at any regular or special meeting, shall receive ten dollars for each meeting attended by them, and officers such compensation as the Board of Directors shall by resolution provide.”

On motion meeting adjourned.

G. J. LOMEN,

Secretary Pro Tem.”

Mr. STEVENSON (Continuing). I never heard or knew of the case of the Northern Light Mining Company against the Blue Goose Mining Company in the Superior Court of the State of California in and for the City and County of San Francisco prior

(Testimony of L. Stevenson.)

to the 22d day of March, 1912. No mention was made of such a case in the meeting of the board of directors when I was elected a director and secretary of the company.

Q. Did the board of directors at any time since you have been secretary of the corporation authorized the employment of any attorney to represent the defendant in any action in the State Courts of the State of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial, and calling for a conclusion [157] of the witness. The minutes are already in.

The COURT.—Have you any personal knowledge about that Mr. Stevenson, outside of the minutes?

A. I have not.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Have you any personal knowledge of what transpired before the board of directors outside of the minutes. Do you know outside of the minutes whether or not any matter came up in relation to the employment of counsel?

A. Nothing was brought up at our meetings except what is shown in the minutes, there was nothing orally transacted.

Q. Mr. Stevenson, during the time between the date of your election as a member of the board of directors and secretary of the defendant corporation, and the 22d day of March, 1911, did the defendant have any property within the State of California?

(Testimony of L. Stevenson.)

Mr. ORTON.—Objected to as being irrelevant, incompetent and immaterial, and not competent evidence to impeach this judgment.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. During such period did the defendant corporation have any officer or agent within the State of California who [158] was authorized to receive or accept service of process issuing out of the courts of California?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant, during such period, have any agent representative, or officer within the State of California authorized to employ counsel to appear for or represent the defendant in actions brought in the courts of the State of California or in this particular action brought in the courts of the State of California?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. During the same period did the defendant do any business or have any business within the state of California?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

(Testimony of L. Stevenson.)

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—I now offer to prove by the witness on the stand, that during the time between the date of his election as a member of the board of directors and secretary of the defendant [159] corporation and the 22d day of March, 1911, the defendant had no property within the State of California, nor agent or officer within the State of California authorized to receive or accept service of process issuing out of the courts of California, nor during such period had the defendant any agent, representative or officer within the State of California authorized to employ counsel to appear for or represent the defendant in actions brought in the courts of the State of California or in this particular action brought in the court of the State of California, nor did the defendant during such period, do any business or have any business within the State of California.

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—I have to abide by my first ruling and deny the offer.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Cross-examination.

(By Mr. ORTON.)

(Witness Continuing.) I had never been a director of the Company until I was elected at the meeting in 1911, between the time of the meeting of September 1911, up to and including the 22d day of March,

(Testimony of Jafet Lindeberg.)

1912, we had no [160] further meetings of the Board of Directors.

I own ten shares of stock. I do not know how many shares have been issued, I cannot tell, know it is less than three hundred thousand shares. .

Testimony of Jafet Lindeberg, for Defendant.

JAFET LINDEBERG, a witness produced on behalf of the defendant, testified as follows:

My name is Jafet Lindeberg, I reside in Nome and have resided in Nome off and on for seventeen or eighteen years. I am president of the Blue Goose Mining Company elected by the board of directors. The president is elected annually. I have been president of the defendant company for six or seven years. I am a stockholder and own one hundred and fifty odd thousand shares of stock which I hold in trust for the Pioneer Mining Company.

I know of the case brought in the Superior Court of the State of California in and for the City and County of San Francisco, by the Northern Light Mining Company vs. the Blue Goose Mining Company, and being the case involved in this trial. I do not know of my own knowledge when the complaint was filed in that case. To my best recollection I first learned of that case in the Superior Court of California in and for the City and County of San Francisco, in the fall of 1911, after I returned from Alaska. I was not in San Francisco nor in the State of California on the 2d day of June, 1911, nor between the 2d day of June 1911, and the date of my return in the fall of 1911. I was in Seattle, [161]

(Testimony of Jafet Lindeberg.)

Washington on the 2d day of June 1911, and left there either on the afternoon of the 2d or third of June for Alaska, and remained in Nome, Alaska until late in the fall. I returned to the State of California sometime in the latter part of October or November—I think about the middle of November—I was not within the State of California between the 1st day of June and sometime in the month of November 1911.

Q. Now Mr. Lindeberg, were you served with any summons or process in this case by any officer in the State of California?

A. I don't remember that, I might have been after I returned from Alaska, but I cannot remember that—I might not have been. I have no recollection of ever having been served with any process in that case, but if I was served it would be after my return in the fall of 1911.

I was at that time president of the defendant Company and a member of its board of directors. The Blue Goose Mining Company is an Alaskan corporation.

Q. What is the character of the business in which the Blue Goose Mining Company is engaged?

Mr. ORTON.—Objected to as immaterial and not proper evidence.

Mr. COCHRAN.—The purpose is to show their business is confined to the Territory of Alaska.

The COURT.—Objection sustained. [162]

To which ruling of the Court the defendant duly excepted and an exception was allowed:

Mr. COCHRAN.—We offer to prove by the wit-

(Testimony of Jafet Lindeberg.)

ness now on the stand, that the defendant was engaged in mining exclusively in the Territory of Alaska.

Mr. ORTON.—The proof is objected to as incompetent to overcome this judgment.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Was the defendant engaged in any business outside of the Territory of Alaska in the year 1911, or prior thereto?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Was the defendant engaged in any business of any character in the State of California during the year 1911 or prior thereto?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—We offer to prove by the witness [163] on the stand that the defendant during the year 1911, or prior thereto, did not have any office outside of the District of Alaska, and had no business of any kind within the State of California.

Mr. ORTON.—Objected to as incompetent to impeach this judgment.

The COURT.—Objection sustained.

(Testimony of Jafet Lindeberg.)

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Prior to the 2d day of March, or the date of the rendition of the judgment in the case at bar in the State of California, did the defendant have any office within the State of California?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—I now offer to prove by the witness on the stand that prior to the 22d day of March, 1911, the defendant had no office within the State of California.

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Now, did the defendant, prior to the date of the entry of this judgment, as alleged, in the State courts of California, or at all, own any property within the [164] *the* State of California.

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant corporation have any officer or agent within the State of California prior to the date of the rendition of the alleged judgment herein sued upon, in the State courts of California upon whom service of process was authorized to be had by the company?

(Testimony of Jafet Lindeberg.)

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant prior to the rendition of the judgment herein sued upon in the State courts of California have any officer or agent within the State of California authorized to do any business on behalf of the defendant in such State?

Mr. ORTON.—Same objection,

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant prior to the rendition of the judgment herein sued upon the State courts of California, have any officer or agent authorized by [165] the corporation to employ counsel or to employ counsel to represent the defendant in any actions brought in the State courts of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

WITNESS (Continuing.) I verified the answer filed in this case in the State courts of California, at the request of Mr. Fink, who was one of the stockholders of the company, associated with the lawsuit in California.

Q. Had you any authority from the board of directors of the corporation to appear, defend, or an-

(Testimony of Jafet Lindeberg.)

swer in that cause brought in the State courts of California?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial and not a question of fact, but one of law and incompetent to overcome this judgment.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Had you any authority from the defendant as president or otherwise, to appear in the action brought by the plaintiff herein in the State courts of California, or to employ counsel therein to defend such action?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial and his action in doing so cannot [166] be defeated by subsequent denial of authority and incompetent to impeach this judgment.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did anyone, to your knowledge, have any authority on behalf of the company, defendant herein, to appear for the defendant in any actions brought against it in the State courts of California?

Mr. ORTON.—Objected to as incompetent to overcome this judgment.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

(Testimony of Jafet Lindeberg.)

Cross-examination.

(By Mr. ORTON.)

I was elected president of the company in 1910. I don't remember whether I was elected in 1909 or not. I was president of the company when I arrived in San Francisco in the fall of 1911.

I learned of this case shortly after my arrival in San Francisco. I hold one hundred and fifty-odd thousand shares of stock as trustee of the Pioneer Mining Company.

Redirect Examination.

(By Mr. COCHRAN.)

I employed Messrs. Fink and White to appear in the [167] case in question in the courts of California and to represent the company therein. I was in San Francisco, California, when I employed them. I employed them after my arrival in San Francisco and after the month of November, somewhere around there, possibly not before the 1st of the year 1912. I don't remember exactly, but I do know it was after the month of October.

Q. What authority from the company did you have to do so?

Mr. ORTON.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted, and an exception was allowed.

Q. Had you any authority to employ counsel in that case to appear and represent the company or to appear and represent the company therein other

(Testimony of Jafet Lindeberg.)

than your general authority as president of the company? A. None.

Q. Did the defendant ever file any copy of its Articles of Incorporation in the State of California or file any documents or papers with any of the officers of said State? A. No, sir.

Q. Mr. ORTON.—That is objected to as entirely immaterial.

The COURT.—Strike the answer out, objection sustained. [168]

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant ever comply with, or attempt to comply with the laws of California as to foreign corporations doing business in that State?

Mr. ORTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Q. Did the defendant ever pay or cause to be paid any license fee or fees in the State of California?

Mr. ORTON.—Objected to as immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant duly excepted and an exception was allowed.

Mr. COCHRAN.—Now, I offer to prove by the witness on the stand, as president of the company, that the defendant never filed any copy of its articles of incorporation in the State of California, or filed any documents or papers with any of the officers of such State, and never complied with, or attempted

(Testimony of Jafet Lindeberg.)

to comply with, the laws of California as to foreign corporations doing business in the State, nor ever paid any license fee or fees to the State of California, and that the defendant never had any office in the State of California, or did any business in the State of California.

Mr. ORTON.—Same objection; it is immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendant [169] duly excepted, and an exception was allowed.

Recross-examination.

By Mr. ORTON.—I employed Messrs. Fink and White after October, 1911, or the first of January, 1912. Mr. Fink informed me that there was litigation pending between the Northern Light Mining Company and the Blue Goose Mining Company, Mr. Fink being one of the stockholders of the company.

Q. That was before you verified the answer that you employed them?

A. Just about that time, I think, but I had no occasion to talk about it prior.

Q. And you paid them, did you?

A. I have paid them, yes, sir.

Q. Out of your own funds, or the Blue Goose Mining Company's funds?

A. I think I paid them out of the Pioneer Mining Company's funds to begin with.

Q. And charged it up to the Blue Goose Mining Company, of course? A. I think so, yes, sir.

Q. So the Blue Goose Mining Company really paid

(Testimony of Jafet Lindeberg.)

counsel? A. I think so, yes, sir.

Q. A thousand dollars at one time?

A. I believe that was charged to the Blue Goose Mining [170] Company either in 1914 or 1915, if I remember right.

Q. Well, a thousand dollars at one time you paid them? A. I think that was the fee.

Q. The Pioneer Mining Company paid it of which you were the chief officer, and you afterwards charged it to the Blue Goose Mining Company?

A. I think that was the way it was done. The books will show it.

Testimony of Ira D. Orton, for Defendant.

IRA D. ORTON, a witness produced for and on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. LOMEN.)—Mr. Orton, you have already testified in this case that you practiced law in the State of California?

A. I believe so, yes, sir.

Q. I will ask you whether, in the year 1911, it was the law in the State of California that a summons may be issued upon the complaint at any time within a year after it is filed; the summons must be served upon each defendant within the State by delivering to him a copy thereof, together with a copy of the complaint. Service upon a foreign corporation doing business within that State may be made upon its managing agent within the State. If the defendant

(Testimony of Ira D. Orton.)

is a nonresident or has departed from the State or conceals himself to avoid service or cannot be found within the State, or is a foreign corporation having no officer or agent within the State [171] upon whom service can be made, service may be made upon such defendant by publication of the summons in a newspaper, and if the residence of such defendant is known, mailing him a copy of the summons and complaint; such service may be made upon an order of the court or judge, and publication, if against a nonresident defendant, must be at least once a week for two weeks. Service is completed at the expiration of the time fixed for publication. When publication has been ordered, personal service out of the State is equivalent to publication. The defendant is required to appear and answer the complaint within ten days after service, if served within the county where the action is brought. In all other cases within thirty days. Unless summons is issued within a year and served, and return made within three years after the commencement of the action, or defendant appears, the action must be dismissed. Is that the law, and was it, during the year 1911?

A. I have no reason to doubt that that was the law at that time. I wasn't very familiar with it at that time and had no occasion to look it up recently.

Thereupon the testimony was closed. [172]

AND THEREUPON the Court, at the request of the plaintiff, instructed the jury as follows:

*“In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Instruction to Jury.

The jury are instructed to find a verdict in favor of the plaintiff and against the defendant for the sum of \$11,661.20, with interest thereon from the 2d day of March, 1912, at the rate of 7% per annum, amounting in the aggregate to the sum of \$14,189.00.

J. R. TUCKER,

District Judge.

Nome, Alaska, July 18, 1916.”

To the giving of which instruction by the Court the defendant in open court and in the presence of the jury and before the [173] jury retired, duly excepted and an exception was allowed, by the Court.

And thereupon the jury in accordance with the instruction of the Court, rendered a verdict in writing and signed by their foreman as follows:

*“In the District Court for the District of Alaska,
Second Division.*

NORTHERN LIGHT MINING COMPANY, a Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corporation,

Defendant.

Verdict.

We, the jury in the above-entitled action, duly empaneled and sworn, find a verdict in favor of the plaintiff and against the defendant for the sum of \$15,189.

Dated at Nome, Alaska, July 18th, 1916.

W. E. BARTHOLOMUE,
Foreman.”

WHEREUPON said verdict was filed and the jury discharged. [174]

The foregoing constitutes all the testimony and all the proceedings given and had upon the trial of the above-entitled cause.

The defendant presents the foregoing as its Bill of Exceptions in this case, and prays that the same may be settled and allowed, signed and certified by the Court as allowed by law.

G. J. LOMEN,
O. D. COCHRAN,
Attorneys for Defendant.

Receipt of a copy of the foregoing Bill of Exceptions is admitted this 28th day of September, 1916.

IRA D. ORTON,

Of Attorneys for Plaintiff. [175]

Order Settling Bill of Exceptions.

The foregoing Bill of Exceptions have been certified, filed and presented for settlement within the time allowed by law and extensions thereof made by orders entered of record herein, and said Bill of Exceptions being now found to be full, true and correct is now hereby SETTLED and ALLOWED.

Done at Nome, Alaska, the 4th day of October, 1916.

J. R. TUCKER,

Judge of the District Court for the District of Alaska, Second Division. [176]

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern Light Min. Co., Plaintiff, vs. Blue Goose Min. Co., Defendant. Bill of Exceptions. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 4, 1916. G. A. Adams, Clerk. By W. McG., Deputy. G. J. Lomen, O. D. Cochran, Attorney for Deft. [177]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

Assignment of Errors.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Comes now the defendant Blue Goose Mining Company, a corporation, and assigns the following errors as having been committed by the Court upon the trial and in the proceedings had in the above-entitled action, upon which said defendant does and will rely upon its Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit.

1.

The Court erred in overruling the objection of the defendant to the introduction in evidence at the trial of said cause, of the exemplified copy of Sections 1, 4, and 5 of article 6 of the Constitution of the State of California, and section 1920 of the Civil Code of the State of California, said exemplified copies being marked Plaintiff's Exhibit 2 and set forth in full in the Bill of Exceptions filed herein, the certificate to said copies of sections 1, 4, and 5 of [178] of the article 6 of the Constitution of the State of Cali-

formia and section 1920 of the Civil Code of the State of California, being as follows:

“STATE OF CALIFORNIA—DEPARTMENT
OF STATE.

I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copies of sections 1, 4, and 5 of article VI of the Constitution of the State of California, and section 1920 of the Civil Code of said State, now in full force and effect, with the originals on file in my office, and that the same are correct transcripts therefrom, and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of California to be affixed hereto this 15th day of September, A. D. 1915.

FRANK C. JORDAN,
Secretary of State.

By _____,
Deputy.

[Great Seal of the
State of California.]
[Canceled I. R. S. Ten Cents.]

2.

The Court erred in overruling the motion of [179] the defendant to be permitted to offer evidence preliminary to the acceptance of the Judgment-roll introduced in evidence by the plaintiff showing want of jurisdiction in the court of California over the defendant.

3.

The Court erred in overruling the objection of the defendant to the introduction in evidence at the trial of said cause of the exemplified copy of the Judgment-roll and Remittitur of the Superior Court of the State of California, City and County of San Francisco, in the case of Northern Light Mining Company, a corporation plaintiff, vs. Blue Goose Mining Company, a corporation, defendant, marked Plaintiff's Exhibit No. 3, and set forth in full in the Bill of Exceptions filed herein.

4.

The Court erred in admitting in evidence over the objections of the defendant, exemplified copy of notice of appeal and exemplified copy of notice of appeal from order denying a new trial, being respectively Plaintiff's Exhibits No. 4 and No. 5; said exhibits being set out in full in the Bill of Exceptions filed herein.

5.

The Court erred in admitting in evidence over the objections of the defendant, the copy of the order of the Supreme Court of the State of California, transferring the case to the District Court of Appeal for hearing, being Plaintiff's Exhibit No. 6 set forth in full in the Bill [180] of Exceptions filed herein.

6.

The Court erred in admitting in evidence over the objection of the defendant, exemplified copy of Order Confirming Judgment, being Plaintiff's Exhibit No. 7, set forth in full in the Bill of Exceptions filed herein.

7.

The Court erred in sustaining the objection of the plaintiff to the following question asked on cross-examination of the witness Ira D. Orton:

Q. Now, as far as services upon a foreign corporation is concerned, upon whom can process be served under the Statutes of California?

8.

The Court erred in sustaining the objection of the plaintiff to the following question asked the witness J. A. Bachelder:

Q. State to the Court whether or not their (Meaning the Blue Goose Mining Company) business is exclusively in the Territory of Alaska.

9.

The Court erred in sustaining the objection of the plaintiff to the following question asked the witness J. A. Bachelder:

Q. Mr. Bachelder, is the defendant corporation engaged in any business in the State of California? [181]

10.

The Court erred in sustaining the objection of the plaintiff to the following question asked the witness J. A. Bachelder:

Q. Were they (meaning the Blue Goose Mining Company) engaged in any business in the State of California, or did they have any office in the State of California in the year 1911?

11.

The Court erred in denying the offer of the de-

fendant to prove by the witness J. A. Bachelder to the effect that the defendant was not engaged in business in the State of California during the year 1911, and had no office of any character in the State of California.

12.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. A. Bachelder:

Q. Did they (meaning Fink and White, lawyers of San Francisco, California) represent or have authority to represent the Blue Goose Mining Company during the year 1911, or at all?

13.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. A. Bachelder:

Q. Mr. Bachelder, did the defendant corporation [182] at any time in the year 1911, or since that date, or at all, have any property within the State of California?

14.

The Court erred in ruling out the testimony of the witness J. J. Cole to the effect that the defendant had no business elsewhere than in the Territory of Alaska.

15.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. J. Cole:

Q. Now, did the Blue Goose Mining Company, the defendant herein, have any business of any

kind in the State of California, prior or subsequent to the 2d day of June, 1911?

16.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. J. Cole:

Q. Mr. Cole, on the 2d day of June, 1911, or prior or subsequent thereto, did the defendant corporation own any property or have any office within the State of California, or elsewhere, other than within the Territory of Alaska?

17.

The Court erred in denying the offer of the [183] defendant to prove by the witness J. J. Cole that the defendant corporation did not prior or subsequent to the 2d day of June, 1911, have any property within the State of California, nor did it upon or prior or subsequent to such date, have any office within or perform any business within the State of California.

18.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness J. J. Cole:

Q. Did the directors of the Blue Goose Mining Company employ or authorize Messrs. Fink and White, or either of them, to appear as attorneys for them in any litigation in the State of California?

19.

The Court erred in sustaining the objection of the plaintiff to the introduction in evidence of the By-Laws of the defendant corporation, the same being

marked Defendant's Exhibit "B," for identification, and which are as follows:

BY-LAWS OF THE BLUE GOOSE MINING COMPANY.

ARTICLE I.

Seal and Place of Business.

Section 1. The corporate seal of this corporation [184] until such time as a proper seal can be secured, shall be as follows:

Section 2. Until changed by the directors, the general office of this corporation shall be at the law offices of Albert Fink, in Nome, Alaska, but the directors may at any regular or special meeting change the place of such office.

ARTICLE II.

Capital Stock.

Section 1. All certificates of stock shall be signed by the president and secretary of this corporation, and sealed with the corporate seal.

Section 2. The directors may provide for the registration of all stock by some bank or trust company.

Section 3. Shares of capital stock may be transferred on indorsement of the certificate, and its surrender to the secretary for cancellation, whereupon the stock shall be transferred upon the books of the corporation, and the transferee shall be entitled to have a new certificate issued to him. The board of directors may by resolution forbid the transfer of stock on the books of the corporation for a space of time, not exceeding thirty days, immediately before

a meeting of the stockholders, or immediately before the payment of a dividend. [185]

Section 4. In case of loss or destruction of a certificate of the capital stock, the owner shall not be entitled to receive a new certificate in lieu thereof until a lapse of sixty days, after written notice, of such loss or destruction has been served on the secretary, and then only on making satisfactory proof of such loss or destruction, and on giving the corporation ample indemnity, by bond or otherwise, as the directors may prescribe. Any new certificate issued under such circumstances shall have plainly marked "Duplicate," on the face thereof.

Section 5. In case of the death of a stockholder a new certificate may be issued to his personal representative on surrender of the old certificate, and on filing with the secretary a duly certified copy of the letters testamentary or of administration.

ARTICLE III.

Stockholders' Meetings.

Section 1. The regular annual meeting of the stockholders of this corporation shall be held at the general offices of the corporation on the first Monday in August of each year, at the hour of 2 o'clock P. M., and said meeting may be adjourned from day to day, until its business is completed.

Section 2. Special meetings of the stockholders may be called by a majority of the directors at such times [186] and places as may be selected; and the directors shall call a meeting of the stockholders after a written request so to do signed by the owners of a majority of the outstanding stock of the corpo-

ration. Such special meeting shall be called at the same place and the same hour as the regular meetings.

Section 3. Whenever a special meeting of the stockholders is called, the secretary shall mail to each of the stockholders, at his last-known address, a written or printed notice of the time and place of holding such special meeting; said notice shall be mailed at least thirty days before the day of the meeting.

Section 4. At all meetings of the stockholders each stockholder shall be entitled to cast one vote for each share of stock held by him, and such votes may be cast in person or by proxy. All proxies shall be in writing, signed by the stockholder and acknowledged like a conveyance of land.

Section 5. At any stockholders' meeting a majority of the stock issued must be represented in order to constitute a quorum for the transaction of business; but the stockholders present at any meeting, though less than a quorum, may adjourn the meeting to some other day.

Section 6. The president and secretary of the corporation shall act as the president and secretary, respectively, at each stockholders' meeting, and the directors of the corporation, or a committee appointed by them from their own number, shall pass on the authenticity of proxies. [187]

ARTICLE IV.

Directors.

Section 1. The affairs of this corporation shall be managed by a board of five directors, who shall be stockholders, and who shall be elected by the stock-

holders at the regular annual meeting, and who shall hold office for one year, and until their successors are elected and qualified.

Section 2. The directors shall elect all the other officers of the corporation. Such election shall be held annually, as soon as possible after the annual stockholders' meeting. All the officers of the corporation shall hold office during the pleasure of the board of directors, but no officer once regularly elected by the board of directors shall be removed from office except by a full board.

Section 3. Vacancies in the offices of the corporation or in the board of directors may be filled by election by the remaining members of the board of directors, at any regular or special meeting of the board.

Section 4. A transfer by a director of all his stock in the corporation shall operate as a resignation of his office.

Section 5. Directors shall not receive any salary or compensation for their services as directors, but a director who is also an officer of the corporation, may, by resolution of the board, receive compensation for his services [188] as such officer.

Section 6. Regular meetings of the board of directors shall be held annually after the adjournment of each regular annual meeting of the stockholders.

Section 7. Special meetings of the board of directors may be called at any time by the president, or by any two directors, by personal notice to each director, who may be found in Nome, Alaska.

Section 8. At any regular or special meeting of

the board of directors, a majority of the directors shall constitute a quorum for the transaction of business, but a smaller number may adjourn the meeting to some other day.

ARTICLE V.

Officers.

Section 1. The officers of this corporation shall be a president, vice-president, secretary, treasurer, and general counsel. They shall be elected by the directors as soon as practicable after each election of directors, and shall hold office during the pleasure of the board, and until their successors are elected and qualified.

Section 2. Only directors shall be eligible to the offices of president and vice-president. A president or vice-president who ceases to be a director shall cease to hold office as president or vice-president as soon as his successor is elected. Any and all of the offices of said corporation may be held by the same person at the same time, with the exception of the offices of president and vice-president. [189]

Section 5. The president shall be the general executive officer of the corporation. He shall preside at all meetings of the directors and stockholders, shall prepare and present at each annual stockholders' meeting a report of the business of the corporation for the preceding year, and a statement of its present condition, shall sign all stock certificates and written contracts of the corporation, and perform generally all of the duties usually appertaining to the offices of president of a corporation. He shall have general charge (subject to the control

of the board of directors) of the business affairs of the corporation, may sign and indorse bonds, bills, checks and promissory notes on behalf of the corporation, and may borrow money in its name; but he shall have no power without the previous consent of the board of directors to incur any debt on behalf of the corporation in excess of the sum of Five Hundred Dollars, or without such consent to bind the corporation by any obligation involving a liability in excess of said sum. He shall at all times keep the directors advised as to the affairs of the corporation.

Section 4. The vice-president shall preside at any meetings of the stockholders and of the directors from which the president may be absent, and he may perform any of the other duties of the president during the absence of the latter, whenever directed to do so by vote of the board of directors.

Section 5. The secretary shall keep the minutes [190] of all stockholders' and directors' meetings, shall keep the stock register and stock transfer-book, and shall be custodian of the corporate seal, and of all records, papers, files and books of the corporation. He shall affix the corporate seal to all documents to which it should be attached, and attest the same by his signature, and shall perform generally all the duties usually appertaining to the office of secretary of a corporation.

Section 6. The treasurer shall have custody of all the money and funds of the corporation, shall keep all the money and funds of the corporation, shall keep its books of account, and shall countersign all

checks of the corporation. He shall deposit the funds of the corporation in some bank or banks to be selected by him with the approval of the board of directors, in the name of the corporation. Whenever requested to do so he shall give bond to the corporation in any amount to be fixed by the board of directors, and with sureties to be approved by them. He shall at all times keep the directors fully informed as to the financial condition of the corporation, and he shall prepare and present at each annual stockholders' meeting a report showing the receipts and disbursements of the preceding year, and the present financial condition of the corporation. He shall be the general financial officer of the corporation, and shall perform all the duties usually appertaining to the office of treasurer of a corporation.

Section 7. The general counsel shall be the legal adviser of the corporation, and shall perform such [191] services and receive such compensation as may be determined by the board of directors.

ARTICLE VI.

Amendments.

Section 1. These By-laws or any of them may be altered, amended, added to, or repealed at any regular or special meeting of a full board of directors.

BE IT RESOLVED by the board of directors of the Blue Goose Mining Company, that the foregoing by-laws shall be and are hereby adopted, as the by-laws of the Blue Goose Mining Company.

IN WITNESS WHEREOF, we the undersigned directors and owners of all outstanding stock of said corporation, have hereunto set our hands this 23d day of August A. D. 1904.

[Endorsed]: #172. N. L. M. Co. vs. B. G. M. Co. Deft's Ex. B. for Identification. July 17, 1916. G. A. Adams, Clerk, Dis. Court. [192]

20.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Were they (meaning Fink and White) at that time, that is at any time before or between the 2d day of June, 1911, and the 22d day of March, 1912, attorneys or representatives of the Blue Goose Mining Company?

21.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. I will put it in a different form: Since you have been a member of the board of directors did the board of directors authorize the employment at any time of Messrs. Fink and White or other counsel to represent the defendant or appear for the defendant in the case in question?

22.

The Court erred in sustaining the objection of the

plaintiff to the following question asked of the witness G. J. Lomen:

Q. Did the board of directors, meeting as a board of directors, at any meeting authorize the employment of Messrs. Fink and White or other counsel to represent or appear for the [193] corporation in the action in question in the State Courts of California?

23.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Now state whether or not the defendant corporation has, since you have been a director of that corporation up to the 22d day of March, the date of the entry of this Judgment, own any property within the State of California?

24.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Since you have been a director of the corporation state, if you know, whether or not the defendant corporation has, or did it do any business within the State of California prior to the 22d day of March, 1912?

25.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen: [194]

Q. Did the defendant corporation authorize Messrs. Fink and White to appear or repre-

sent the defendant in the action in the State Courts of California so far as you know as a director of the corporation?

26.

The Court erred in denying the offer of the defendant to prove by the witness G. J. Lomen, that he, the said G. J. Lomen, had knowledge of all the acts of the board of directors since the year 1909; that the board of directors at no time authorized the appearance of Fink and White for the defendant in the action in question in the State Courts of California, or to represent the defendant in such action.

27.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. Just state what your duties were as counsel for the corporation with relation to litigation of the corporation.

28.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness G. J. Lomen:

Q. State whether or not there was during the year 1911, or 1912, any agent or representative of the defendant resident of the State of California who had authority from the board of directors to [195] accept service of process in the State of California issuing from the courts of that State; or who had authority from the board of directors to appear, represent or defend any actions brought against the defendant

in the courts of said State of California, or who had authority from the board of directors of the corporation to employ any one to appear, represent or defend actions brought against the defendant within the State of California in the State Courts of California.

29.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. Did the board of directors at any time since you have been secretary of the corporation, authorize the employment of any attorney to represent the defendant in any action in the State Courts of California?

30.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. Mr. Stevenson during the time between the date of your election as a member of the board of directors and secretary of the defendant [196] corporation, and the 22d day of March, 1911, did the defendant have any property within the State of California?

31.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. During such period (meaning between the date of the election of the witness a member of the board of directors of the defendant company

and the 22d day of March, 1911) did the defendant corporation have any officer or agent within the State of California who was authorized to receive or accept service of process issuing out of the courts of California?

32.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. Did the defendant during such period (meaning the period between the date of the election of such witness a member of the board of directors and the 22d day of March, 1911) have any agent, representative or officer within the State of California authorized to employ counsel to appear for or represent the defendant in an action brought in the courts of the State of California, or in this particular action brought in the [197] State courts of California.

33.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness L. Stevenson:

Q. During the same period (meaning the period between the election of the witness a member of the board of directors of the defendant and the 22d day of March, 1911), did the defendant do any business within the State of California.

34.

The Court erred in denying the offer of the defend-

ant to prove by the witness L. Stevenson that during the time between the date of his election as a member of the board of directors and secretary of the defendant corporation, and the 22d day of March, 1911, the defendant had no property within the State of California, nor agent nor officer within the State of California authorized to receive or accept service of process issuing out of the courts of California; nor during such period did the defendant have any agent, representative or officer within the State of California authorized to employ counsel to appear for or represent the defendant in actions brought in the courts of the State of California, or in this particular action brought in the courts of California, nor did the defendant, during such period, do any business or have any business within the State of California.

[198] 35.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. What is the character of the business in which the Blue Goose Mining Company is engaged?

36.

The Court erred in denying the defendant's offer to prove by the witness Jafet Lindeberg that the defendant was engaged in mining exclusively in the Territory of Alaska.

37.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Was the defendant engaged in any business outside of the District of Alaska in the year 1911, or prior thereto?

38.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Was the defendant engaged in any business of any character in the State of California during the year 1911, or prior thereto?

39.

The Court erred in refusing the offer of the defendant to prove by the witness Jafet Lindeberg that the defendant, [199] during the year 1911, or prior thereto, had no officer outside of the Territory of Alaska, or did any business of any character within the State of California.

40.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Prior to the 2d day of March, or the date of the rendition of the judgment in the case at bar in the State Courts of California, did the defendant have any officer within the State of California?

41.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Now, did the defendant, prior to the date of the entry of this judgment, as alleged in the

State courts of the State of California, or at all, own any property within the State of California?

42.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did the defendant corporation have any officer or agent within the State of California prior to [200] the date of the rendition of the alleged judgment herein sued upon, in the State Courts of California upon whom service of process was authorized to be had by the company?

43.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg.

Q. Did the defendant, prior to the rendition of the judgment herein sued upon in the State Courts of California, have any officer or agent within the State of California authorized to do any business on behalf of the defendant in such State?

44.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did the defendant, prior to the rendition of the judgment herein sued upon in the State Courts of California, have any officer or agent authorized by the corporation to employ coun-

sel to represent the defendant in any actions brought in the State Courts of California?

45.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg: [201]

Q. Had you any authority from the board of directors of the corporation to appear, defend or answer in that cause (meaning the cause of Northern Light Mining Company vs. Blue Goose Mining Company) brought in the State Courts of California?

46.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Had you any authority from the defendant as president or otherwise, to appear in the action brought by the plaintiff herein in the State courts of California, or to employ counsel therein to defend such action?

47.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did anyone, to your knowledge, have any authority on behalf of the company, defendant herein, to appear for the defendant in any actions brought against it in the State courts of California?

48.

The Court erred in sustaining the objection of the

plaintiff to the following question asked of the witness Jafet Lindeberg: [202]

Q. What authority from the company did you have to do so (meaning to employ Messrs Fink and White to appear and represent the Company in the case of Northern Light Mining Company vs. Blue Goose Mining Company in the State courts of California).

49.

The Court erred in striking out the evidence of the witness Jafet Lindeberg to the effect that the defendant never filed any copy of its Articles of Incorporation in the State of California, or filed any documents or papers with any of the officers of such State.

50.

The Court erred in sustaining the objection of the plaintiff to the following question asked of the witness Jafet Lindeberg:

Q. Did the defendant ever comply with or attempt to comply with the laws of California as to foreign corporations doing business in that State?

51.

The Court erred in denying the offer of the defendant to prove by the witness Jafet Lindeberg, that the defendant never filed any copy of its articles of incorporation in the State of California or filed any documents or papers with any of the officers of such State, and never complied with or attempted to comply with the laws of [203] California with relation to foreign corporations doing business in

that State, nor ever had any license of, or office in the State of California, that the defendant never had any office in the State of California nor did any business in the State of California.

52.

The Court erred in instructing the jury "to find a verdict in favor of the plaintiff and against the defendant for the sum of \$11,661.20, with interest thereon from the 2d day of March, 1912, at the rate of seven per cent per annum, amounting in the aggregate to the sum of \$14,189.00."

WHEREFORE the said defendant prays that said judgment may be reversed.

O. D. COCHRAN,
G. J. LOMEN,
Attorneys for Defendant.

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern Light Mining Co., a Corporation, Plaintiff, vs. Blue Goose Mining Co., a Corporation, Defendant. Assignment of Errors. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 4, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendant. [204]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Petition for Writ of Error.

The Blue Goose Mining Company, a corporation, defendant in the above-entitled cause, feeling itself aggrieved by the verdict of the jury and the judgment entered upon said verdict in the above-entitled court, on the 5th day of August, 1916, comes now by the undersigned, its attorneys, and petitions said Court for an order allowing said defendant to prosecute a Writ of Error to the Honorable United States Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided. And that also an order be made fixing the amount of security which said defendant shall give and furnish upon said Writ of Error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until [205] the termination of such Writ of Error by the said United States Court

of Appeals for the Ninth Circuit.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendant.

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern Light Mining Co., a Corporation, Plaintiff, vs. Blue Goose Mining Co., Defendant. Petition for Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Oct. 4, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendant. [206]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Order Allowing Writ of Error.

Now, on the 4th day of October, 1916, it is ordered that a Writ of Error be allowed as prayed for in the petition for writ of error heretofore filed by the above-named defendant in this cause, and that the defendant give a bond in the sum of Twenty Thou-

sand Dollars, which will operate as a supersedeas.

Done at Nome, Alaska, the 4th day of October, 1916.

J. R. TUCKER,

District Judge.

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern Light Mining Co., a Corporation, Plaintiff, vs. Blue Goose Mining Co., a Corporation, Defendant. Order Allowing Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 4, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendant. [207]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, Blue Goose Mining Company, a corpora-
tion, as principal, and Jafet Lindeberg, and G. P.
Goggin, as sureties, are held and firmly bound unto

the Northern Light Mining Company, a corporation, plaintiff in the above-entitled action, in the sum of Twenty Thousand Dollars, for the payment of which well and truly to be made we bind ourselves, our and each of our heirs, executors, administrators and assigns, firmly by these presents.

Sealed with our seals, and dated this 4th day of October, 1916.

WHEREAS, lately at a session of the above-entitled court in an action pending in said court between Northern Light Mining Company, a corporation, plaintiff, and Blue Goose Mining Company, a corporation, defendant, a judgment [208] was on the 5th day of August, 1915, rendered and entered in favor of said plaintiff and against the said defendant, and said defendant having obtained from the said District Court an order allowing a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, to review said judgment, and a citation to said Northern Light Mining Company, the said plaintiff, is about to be issued citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California.

NOW, THEREFORE, the condition of the above obligation is such that if the said Blue Goose Mining Company, the defendant, shall prosecute its said writ of error to effect and answer all damages and costs, if they fail to make their plea good, then this obliga-

tion shall be void, otherwise to remain in full force and effect.

BLUE GOOSE MINING COMPANY,

By JAFET LINDEBERG,

President,

Principal.

G. P. GOGGIN,

JAFET LINDEBERG,

Sureties. [209]

United States of America,

Territory of Alaska,—ss.

Jafet Lindeberg and G. P. Goggin, being duly sworn, *doth* depose and say:

THAT he is one of the sureties named in the foregoing bond; that he is worth the sum of Ten Thousand Dollars, over and above all his just debts and liabilities, and exclusive of property exempt from execution.

JAFET LINDEBERG.

G. P. GOGGIN.

Subscribed and sworn to before me this the 4th day of October, 1916.

G. J. LOMEN,

Notary Public in and for the Territory of Alaska.

(My commission expires on the 27th day of June, 1917.)

The foregoing bond and the sureties therein are hereby approved this 4th day of Oct., 1916.

J. R. TUCKER,

District Judge. [210]

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern

Light Mining Co., a corporation, Plaintiff, vs. Blue Goose Mining Co., a corporation, Defendant. Bond on Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska. G. A. Adams, Clerk. By W. C. McG., Deputy. G. J. Lomen and O. D. Cochran, Attorney for Defendant. [211]

*In the District Court for the District of Alaska,
Second Division.*

No. 2616.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, G. A. Adams, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 211, both inclusive, are a true and exact transcript of the Complaint, Amended Answer, Reply, Instructions to Jury, Verdict, Judgment, Bill of Exceptions, Assignment of Error, Petition for writ of error, order thereon, bond, in the case of Northern Light Mining Company, a corporation, plaintiff vs. Blue Goose Mining Company, a corporation, defendant, No. 2616 this Court, and of the whole thereof, as

appears from the records and files in my office at Nome, Alaska and further certify that the original Writ of Error, original Citation and Order enlarging time to file and docket transcript on writ of error in above-entitled cause are attached to this transcript.

Cost of transcript \$89.45, paid by G. J. Lomen, of attorneys for defendant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 3d day of November, A. D. 1916.

[Seal]

G. A. ADAMS,
Clerk. [212]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Writ of Error.

United States of America,
Territory of Alaska,—ss.

The President of the United States of America, to
the Honorable the Judge of the United States
District Court for the District of Alaska, Sec-
ond Division, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you between the Northern Light Mining Company, a corporation, plaintiff, and Blue Goose Mining Company, a corporation, defendant, a manifest error hath happened to the great damage of the said Blue Goose Mining Company, plaintiff in error, as by their complaint appears.

We, being willing that error, if any hath been, [213] should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the records and proceedings aforesaid, and all things concerning the same, to the Justice of the United States Circuit Court of Appeals for the Ninth Circuit in the City and County of San Francisco, in the State of California, together with this Writ, so as to have the same at said place on the 3d day of November, 1916, and that the records and proceedings aforesaid, being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct these errors what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 4th day of October, 1916.

Attest my hand and seal of the United States District Court for the District of Alaska, Second Divi-

sion, at the Clerk's office [214] at Nome, Alaska,
this 4th day of October, 1916.

[Seal]

G. A. ADAMS,

Clerk of the District Court for the District of
Alaska, Second Division.

Allowed this 4th day of October, 1916.

J. R. TUCKER,

Judge of the District Court for the District of
Alaska, Second Division.

Service of the within Writ of Error and receipt of a Copy thereof is hereby admitted this — day of Oct., 1916.

IRA D. ORTON,

Of Attorney for Deft. in Error. [215]

[Endorsed]: No. 2616. In the District Court for the District of Alaska, Second Division. Northern Light Mining Co., a Corporation, Plaintiff, vs. Blue Goose Mining Co., a Corporation, Defendant. Writ of Error. [216]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

VS.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

Citation on Writ of Error.

United States of America,
Territory of Alaska,—ss.

The President of the United States of America, To
the Northern Light Mining Company, GREET-
ING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City and County of San Francisco, in the State of California, on the 3d day of November, 1916, pursuant to a Writ of Error filed in the clerk's office of the United States District Court for the District of Alaska, Second Division, wherein the Blue Goose Mining Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that [217] behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 4th day of October, 1916.

[Seal]

J. R. TUCKER,

Judge of the District Court for the District of
Alaska, Second Division.

Attest: G. A. ADAMS,

Clerk.

Personal service of the foregoing citation made

on me and the receipt of a copy thereof admitted
this — day of October, 1916.

IRA D. ORTON,

Of Attorneys for Defendant in Error. [218]

[Endorsed]: No. 2616. In the District Court
for the District of Alaska, Second Division. Nor-
thern Light Mining Co., a Corporation, Plaintiff,
vs. Blue Goose Mining Co., a Corporation, Defend-
ant. Citation. [219]

*In the District Court for the District of Alaska, Sec-
ond Division.*

No. 2616.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Plaintiff,

vs.

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Defendant.

**Order Enlarging Time to December 2, 1916, to File
Record and Docket Cause.**

On motion of O. D. Cochran and G. J. Lomen, at-
torneys for the defendant above named, and good
cause being shown therefor,

ORDERED, that the time for filing and docketing
the transcript upon writ of error herein be, and the
same is hereby extended until the 2d day of Decem-
ber, 1916.

Done in open court this 21st day of October, 1916.

J. R. TUCKER,
District Judge. [220]

#2616. In the District Court for the Territory of Alaska, Second Div. Northern Light Mining Company, a Corporation, Plaintiff, vs. Blue Goose Mining Company, a Corporation, Defendant. Order Enlarging Time to File and Docket Transcript on Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 21, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. Orders Judgments. Vol. 11, page 317. C.

[Endorsed]: No. 2880. United States Circuit Court of Appeals for the Ninth Circuit. Blue Goose Mining Company, a Corporation, Plaintiff in Error, vs. Northern Light Mining Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Second Division.

Filed November 22, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

*District Court for the District of Alaska, Second
Division.*

BLUE GOOSE MINING COMPANY, a Corpora-
tion,

Appellant,

vs.

NORTHERN LIGHT MINING COMPANY, a
Corporation,

Respondent.

**Order Enlarging Time to December 28, 1916, to File
Record and Docket Cause.**

Good cause appearing therefor IT IS HEREBY
ORDERED that the time within which to file the
record and docket the case herein with the clerk of
this court, may be and it is hereby enlarged to the
28th of December, 1916.

Wm. H. HUNT,

Justice of the Circuit Court of Appeals.

Dated this 15th day of November, 1916.

[Endorsed]: Docketed No. 2880. United States
Circuit Court of Appeals for the Ninth Circuit.
Blue Goose Mining Co., &c., Appellant, vs. Nor-
thern Light Mining Co., &c., Respondent. Order
Under Rule to Enlarge Time to December 28, 1916
to File Record Thereof and to Docket Case. Filed
Nov. 15, 1916. F. D. Monckton, Clerk. Refiled
Nov. 22, 1916. F. D. Monckton, Clerk.